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LEASING CROPLAND IN ALBERTA

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LEASING CROPLAND IN ALBERTA

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PREFACE

Leasing land can be an attractive option that complements land ownership. This publication is intended to provide a comprehensive discussion of possible lease arrangements. Uncertainty about the best type of leasing arrangement for both landlord and tenant can be reduced by understanding the goals of each party. In addition to rental arrangements, the issue of how much rent to pay, leases and income tax, the law and surface rights are also discussed in this guide.

Sample lease agreements are included to demonstrate the embodiment of rental goals and ideas into a written document.

This publication was revised by Garth Nickorick under the direction of Gerd Andres, Farm Economist, Farm Planning Section, Farm Business Management Branch, Alberta Agriculture. We gratefully acknowledge the advice and contribution of Calvin Brandley, Agricultural Law Solicitor, Alberta Agriculture.

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LEASING CROPLAND IN ALBERTA

INTRODUCTION

"All farm leasing arrangements are very nearly the same and farmers understand what they are required to do" — WRONG! The ever increasing complexity of farming today is reflected in the many different types of farm business transactions in existence.

Choosing a means of acquiring land may be one of the more important decisions the producer of agricultural commodities will ever make. Whenever possible people have been inclined to purchase land, since ownership provided the widest possible rights of use. Leasing land, however, is an alternative when land is not available or priced too high.

Landowners not able or who do not desire to farm themselves can sell out or lease their land. Those who decide to maintain ownership are looking for someone to work the land and maintain it in good condition. Owners also wish to receive some return on their investment. They certainly weigh carefully the rental bid and the character of the tenant, as there is little to be gained from a higher rental if at the end of the lease the land is weedy and eroded.

Prospective tenants are looking for ways to bolster their net earnings. From this point of view, the land should pay its own way, contribute additional funds to present fixed costs and reward tenants for their time and effort.

There are two basic components of a lease agreement. First, the terms of the agreement must be defined. This includes financial, legal and tax considerations for both parties. Second, an acceptable rent payment must be established.

While lease agreements vary, modifications are strongly influenced by tradition. Consequently, going rates and traditional lease agreements determine the basic conditions of most leases.

However, merely going with the traditional and not recognizing the economic, management, legal and tax implications could result in unnecessary problems for landowners and tenants in the future.

Questions commonly asked about leasing include:

"Our lease is only verbal, nothing is in writing, is it a lease?"

"My landlord sold his land. Can the new purchaser put me off the land? I still have two more years under the lease with the former landlord."

"I leased my land for cash for three years, but after the first year the tenant gave up the land. Is he still responsible for the other two rental payments? Do I have to try to re-rent the land?"

"I'm renting land on a crop share basis, does the landlord have to help pay for the cost of the weed spray?"

"On a crop share lease, who owns the straw?"

"My tenant isn't farming the land properly. What does 'in a husbandlike manner' mean?"

"Are payments made to the tenant under a government assistance program to be shared with the landlord?"

"An oil company is drilling a well on my rented land; do I have to share the compensation with my tenant, or can I take that many acres out of the lease?"

"Our lease expires this fall leaving fewer acres in summerfallow than when I started farming it. Do I have to pay for the difference?"

"In the last year of the lease can I enter my land and do the fall cultivation?"

"After the lease expires, is there a limit to the time I can store my share of the crop in the landlord's granaries?"

"Can I continuously crop the land or do I have to summerfallow some each year?"

"We had a three year lease but the tenant has rented the land for the last four years. We're having a dispute this year over the rent. If we can't agree, will the rent be determined by what is being paid by other tenants in this area?"

"I want to terminate this lease, how much notice is necessary?"

This publication will address features of common leasing arrangements in Alberta and their characteristics as they pertain to renting cropland. It is not intended to support or recognize any one arrangement as being superior or to recommend the rate of rent to be paid. Rather it is to provide information regarding considerations that landowners and tenants will be required to make when developing a lease agreement.

LEASES AND THE LAW

The following is a general outline of the law as it applies to land leases. It should not be considered as an interpretation or complete coverage of the existing statutes. It is recommended that you consult with a lawyer for answers to specific problems.

When a person is in possession of lands of another under a lease, written or oral, express or implied, the relationship of landlord and tenant exists and the tenant must pay rent.

If the terms of payment are not set out, the law will imply a contract was made to pay the landowner a reasonable sum for the use and occupation of the land. A judge who may, or may not, have had any experience with agriculture will determine what is reasonable or "the custom of the trade".

A land lease is a contract by which one person, called the lessor, conveys the use of the land's real property to another person, called the tenant or lessee, for a period of time, called the term, for a consideration, called rent.

A lease agreement is like all other contracts in that both parties must be competent to enter into a contract. A lease by or to a minor or mentally incompetent person may not be binding on the parties and a lawyer should be consulted prior to entering into such a lease.

Verbal lease agreement

A verbal lease of a term not exceeding three years is enforceable and valid. For example, if another person were to purchase the land from a landowner, the new landowner would be required to honor the existing lease providing the tenant is actually farming the land. Therefore, the onus is on the purchaser to ensure the property has not been rented. The purchaser should make inquiries in the district to determine who farmed the land last year. Verbal leases are often invalid as a result of provincial laws dealing with the consent of the spouse. Under The Dower Act of Alberta, no sale, lease, mortgage or other disposition by a married person of the home quarter shall be made during the lifetime of the spouse unless the spouse consents thereto in writing.

Therefore, if the land to be leased is owned solely by the husband and he has lived on the land since his marriage, his wife must sign the Consent Of Spouse form and have the Certificate of Acknowledgement by Spouse completed by a commissioner of oaths. It is not necessary to acquire the consent of the spouse in instances where land to be leased is owned solely by the wife or husband if neither spouse has ever resided on that land.

The Statute of Frauds, an Imperial Law passed in 1677 is still in force in Canada. The statute states that all land deals must be in writing to be enforceable. The only exception to the rule is if the term of the lease does not exceed three years and if there is part performance (i.e. tenant taking possession or performing some operation on the land) then it need not be in writing. Exceptions to the rule can arise, however, as the following example illustrates.

On March 3, Able agrees to lease his land to Jake. The lease is verbal. On April 2, Able gets a better offer from Sam so he agrees to lease the land to Sam. Jake has *not* started farming the land as of April 2.

The lease between Able and Jake is not valid because it is not in writing and therefore contravenes the Statute of Frauds. Jake could not claim damages for the breach of the lease, nor could he argue that he has a better right to the land even though his lease was first.

However, if Jake had taken action on the lease before Able offered it to Sam, Sam's lease would be void. If Jake made his rental payment on March 4 and started field work (like picking stones) on March 28, the court would find that the exception to the rule applies and hold that the lease is valid.[1]

Written lease agreement

To be enforceable, a lease for a term exceeding three years is required to be in writing. However, it is advisable that all lease agreements, regardless of their duration, be written. When a lease is written, it should state all terms and conditions as any verbal promises associated with written agreements may not be binding.

Although a written lease for a period exceeding three years is binding on the landowner and tenant, it must be registered with the Land Titles Office to be valid and enforceable by the tenant if the property is sold. Written leases with a term of less than

[1] Canadian Farm Law — a Guide for Today's Farmer, Donald John Purich, Western Producer Prairie Books, Saskatoon, Saskatchewan. (An excellent discussion of farm leases.)

three years cannot be registered with the Land Titles Office. However, the tenant may secure protection similar to that of a registered lease by filing a caveat on the land.

The Land Titles Act C. L 5 states that:

Sec. 98 (1) When land for which a certificate of title has been granted is intended to be leased or demised for a life or lives, or for a term of more than three years, the owner shall execute a lease, in the prescribed form (file a caveat).

Sec. 98 (4) of The Land Titles Act raises a second problem:

Sec. 98 (4) No such lease of mortgaged or encumbered land is valid and binding against the mortgagee or encumbrance unless the mortgagee or encumbrance has consented to the lease prior to its being registered, or subsequently adopts it.

What this subsection (4) means is that the tenant with a lease of more than three years is not protected against a mortgagee of the land unless the lease was registered before the mortgage or the mortgagee consents to the lease. Accordingly it would be wise for a tenant negotiating a lease of more than three years to check the title of the leased lands. If a mortgage is registered against the leased lands, the five year lease is not enforceable against the mortgagee. Incidentally, you do not have to be the registered owner of the land to obtain a photocopy of the title which will inform if there are any mortgages against the land.

This technically is a far cry from a verbal lease agreement made over a cup of coffee and completed with a handshake.

To minimize the chances of misunderstanding between the landlord and tenant a lease should be in writing for the following reasons:

- The act of putting the terms of an agreement down in writing crystallizes the thinking of each party.
- It makes it easier for each party, as neither will have to depend on memory as to the terms of the lease.
- It makes it possible for each party to review the lease and know if they are doing their part.
- It helps to prevent the necessity of relying on customary practices to settle differences which can result when there is a misunderstanding. It may be the customary practice is neither applicable nor in accordance with the original intention of the parties.
- If one party should die, the written lease will protect heirs from unreasonable or false claims from the other party.
- It is a must dealing with bankers and other business parties as it shows:
  — you are following good business practices
  — you have something concrete on which your earning capacity can be evaluated.

Written land lease agreements should contain the following:

- *Date of the agreement*
- *Full names and address of each landowner and tenant*
- *Description of property to be rented* — The exact legal description is required if the lease is to be registered in the Land Titles Office. If certain areas or permanent buildings are to be excluded, these must be specified. For example, the landowner may wish to exclude the farm house and continue residing on the premises.
- *Length of the lease* — The agreement must state the duration of the lease including the time it commences and terminates. Since economic conditions may change, agreements in excess of three years should provide for a periodic review of the essential terms.
- *Amount and payment of rent* — The rent payable for leased land is usually a share of the crop or cash rent. Negotiation and agreement are the final determinants of the amount of rent. The amount of rent and payment schedule should be included in the written agreement.
- *Responsibility for taxes* — Unless specified otherwise in the written agreement, taxes are the responsibility of the landowner.
- *Compensation for repairs to buildings, fences and improvements* — The written agreement should state who is responsible for repairing buildings, fences, and other improvements and how the expenses will be shared. A common practice is to have the tenant responsible for all minor repairs and the landowner reimburse the tenant for authorized major repairs. Compensation may be in the form of an increased portion of the crop share for the tenant or reduced rent payments. Major improvements include building and fence construction, erosion control, water development, and clearing and breaking. It is usually required that the tenant obtain written permission from the landowner before making major improvements. It is also important to outline how the value of improvements will be determined and when compensation will be made.
- *Rights to assign or sublet the lease* — The written agreement could contain a clause which prevents the tenant from subletting or assigning the lease to another individual without written consent of the landowner.
- *Restriction and responsibilities regarding production practices and management decisions* — The written agreement should specify those pro-

duction and management decisions which the landowner insists be carried out by the tenant, such as summerfallow, cropping decisions, fertilizer and chemical use, crop insurance, quota allocation, delivery and sale of grain, etc. A party to a lease arrangement who incurs a loss created by a change in the required cropping decisions as outlined by the agreement should be reimbursed to the extent of the reduced income.

- *Responsibility for grain storage* — The written agreement should outline the minimum amount of grain storage, if any, to be provided by the landowner. If additional grain storage is required, it is usually provided by the tenant.
- *Grain stored on land at commencement and termination of the lease* — The written agreement should specify how long undelivered grain can be stored on the rented land without storage charges.
- *Right of entry* — The landowner or representative of the landowner should have the right at all times to inspect the rented property and remove any grain stored on the land which was not sold at the commencement of the lease. Similarly, tenants should be able to remove their share of the grain stored on the rented land or complete harvesting of the crop after termination of the lease agreement.
- *Insurance* — Insurance on all buildings will normally be the responsibility of the landowner.
- *Arbitration* — It is considered desirable to include an arbitration clause in a written agreement. Any disagreement which might arise and which cannot be resolved between the landowner and tenant would by mutual agreement be referred to a third party who would act as an arbitrator. This approach is usually preferable to a court case which can be very costly.
- *Miscellaneous* — The two parties to the lease agreement may write into the lease a clause which would terminate the lease if certain natural disasters occurred. For example, if the land were flooded and the tenant was unable to use the property, it would be unfair to insist that the tenant continue to pay rent.

Other unforeseen circumstances include the installation of a highway, gas line, oil well sites, etc. on the rented land thus creating inconvenience and additional operating expenses for the tenant. In some instances it may be considered desirable to renegotiate the terms of the lease or compensate the tenant for the added costs or reduced income which may incur.

Once all the requirements of The Dower Act are completed and the lease agreement is signed, it is final and binding. If the signatures are witnessed and the witness completes the Affidavit of Execution, it is not necessary at a later date to prove the signatures. If they are not witnessed or the witness does not complete the Affidavit of Execution, such signatures may have to be proved.

If the lease is renewed, it is necessary to complete all of the required legal documents as was done when the lease was first established.

Termination of a lease agreement

There are several situations in which a lease may be terminated. These include the following:

- expiry of the term
- surrender of the lease by the tenant
- sale of property to the tenant
- foreclosure by a party holding a mortgage against the property if the mortgagee is not part of an agreement which assures the tenant of the right to occupy the property
- notice to terminate the lease — this is used when a lease agreement does not expressly state a termination date. A lease without a specified term may be found to be unenforceable. If this was a yearly agreement, six months notice would be required prior to termination.

Rights of the landlord and tenant

The Alberta Landlord and Tenant Act (c. L.6) applies generally to any lease entered into after July 1, 1979, and also applies to a renewal of that tenancy entered into before that date.

There are different rules for residential and non-residential leases. Farm leases come under the non-residential tenancy rules.

The main section under the act that deals with farm leasing is a notice to quit and where it is required.

If a lease has a specified term of years, a notice to quit is not required. At the end of the term the lease is ended. Where a lease provides that either party may terminate the lease before expiration of the term upon the application of a specified sum, a notice to quit is not necessary.

In Alberta, unless otherwise specifically agreed, a notice to terminate a yearly tenancy must be served by either party on or before the 60th day before the last day of any tenancy year to be effective on the last day of the tenancy year. "Tenancy year" refers to the yearly period on which the tenancy is based whether or not it is a calendar year. Unless otherwise specifically agreed upon, the year is deemed to begin on the day on which the tenant first became entitled to possession.

A farm lease at an annual rent constitutes a yearly tenancy, which continues at the same rent for the second year as the first if the tenant is allowed to remain in possession.

Where a tenant continues in possession of the landlord's land, there is an implied tenancy from year to year. To terminate this type of lease would require the statutory notice to quit under The Landlord and Tenant Act.

It is interesting to note that The Landlord and Tenant Act also covers the notice to terminate a tenancy where your employee who has been renting a home on your premises quits. Otherwise your notice to quit would require three months' notice to terminate.

Section 9 of the Act reads:

> If a periodic tenancy of residential premises has been entered into by reason of the tenant's employment by the landlord and that employment is terminated, either the landlord or the tenant may terminate the tenancy by serving notice on the other party in sufficient time to provide a period of notice of termination of the tenancy that is
>
> — equal to the period of notice of termination of employment required under any law in force in Alberta that is applicable to the tenant's employment
>
> — equal to the period of notice of termination of employment agreed to by the landlord and the tenant, or of one week's duration, whichever period is longest.

Failure to pay the rent

A farm cash lease is legally binding on both parties as are all the other lease agreements. A tenant does not have the right to abandon the lease unless there has been total "frustration". However, if a tenant abandons or returns land rented under a cash lease, prior to its expiration, the tenant is still liable for the subsequent payments. The landlord in this situation would be required to attempt to "mitigate" damages — to attempt to obtain another renter at the same rent or as near as possible to it.

A landlord has the right to distrain for rent but by such action loses the right to terminate. The landlord may, however, sue for damages for the breach or for rent moneys owing and in either case it does not cancel out a notice to terminate.

Failure to perform

A landlord can terminate a lease for nonpayment of rent or if the tenant fails to fulfill one of the major terms of the lease. Examples of these terms are failing to farm the land in a reasonable agronomic manner and failing to fulfill the covenant to summerfallow.

The standard set by the courts to determine if the land is farmed in a reasonable agronomic manner must be in accordance with the custom as to good husbandry in the district, under like circumstances.

The law relating to the covenant to summerfallow is gleaned from court cases which state as follows:

> Where a lease includes a covenant to summerfallow, the fact that the presence of water on part of the land prevents plowing is not an answer to a claim for a breach of the covenant. Where someone by an agreement creates a duty or charge upon themself, they are bound to carry it out notwithstanding that prevention from so doing by some accident or contingency which they might have provided against.
>
> Likewise, the fact that a portion of the land is in such a condition that the lessee finds it impossible to summerfallow is not a defence where it must be assumed that when the lessee entered into the lease, the lessee was aware of what was needed to summerfallow the land properly. However, exceptional weather conditions may justify relief from forfeiture for failure to comply.
>
> Where a lease contains a covenant to either crop or summerfallow every portion of the demised premises under cultivation, it is not open to the lessee to do neither, on the grounds that the season is too wet, where it is possible to grow a crop of some kind on the part of the farm in question.
>
> A greenfeed crop comes within the definition of "crop" under such covenant.

In Alberta before a lease can be terminated the landlord must give the tenant notice that the tenant has failed to perform one of the terms of the lease and that the tenant is required to immediately correct the breach.

If the tenant does not remedy the breach within a reasonable period of time, the landlord can terminate the lease. The termination must be written notice telling the tenant the basis on which the lease is being terminated and describing the breach in question.

A tenant has the right to go to court to question the landlord's right to terminate the lease. As well, the court has the power to order that the lease remain in force, even though the tenant has breached it, on condition that the tenant rectify the breach. If the landlord is attempting to terminate the lease after the tenant has put the crop in (but before harvest), in most cases the courts will give the tenant another chance.

CROPLAND LEASING ARRANGEMENTS

Crop share lease agreement

One of the common methods of leasing land is by crop share lease agreement. Under the terms of a crop share lease, the landowner and tenant share, in predetermined portions, the various kinds or grades of grain produced on the rented land. A crop sharing agreement is a risk sharing agreement as well. Some of the uncertainty associated with crop yields and fluctuating prices for commodities produced is shared by the landowner.

A very close business arrangement between the tenant and landowner is established in a crop share lease as a result of the sharing of production and price risk and possible sharing of some operating costs. Therefore, it is important for the landowner to assess the tenant's farming ability, labor available and machinery complement. Since the landowner's rent is a share of the production, it is possible that the landowner may well want a voice in management decisions.

In Alberta, the most common share of production is one-third to the landowner and two-thirds to the tenant. While this arrangement is traditional, a recent survey indicates that a number of different sharing arrangements are in effect and may become increasingly popular. Any combination of sharing proportions (25:75, 40:60, etc.) is possible.

Advantages of crop share leasing for the landowner

- Since rent varies with the value of production and a landowner does not receive a fixed amount of rent, there is a tendency for longer term leases to be established (3-5 years). In a long term arrangement it is possible that improvements to the land and good farming practices are more likely to be developed by the tenant.
- In a year of top yields and/or excellent prices the landowner can receive a large rent, perhaps one and a half to two times the usual cash rent.

Disadvantages of crop share leasing for the landowner

- The landowner shares the production and price risk with the tenant. There is no guaranteed rent established.
- Rent is received when production is sold. When marketing conditions are sluggish the landowner will have to wait, as does the tenant, for the opportunity to deliver the crop and receive payment. Marketing decisions also influence the return to the landowner. For example, the owner may be willing to sell, yet the tenant wants to wait for a big rise in prices.
- A landowner is never really sure of getting a full share. From seeding to selling there is plenty of opportunity for an unscrupulous tenant to take advantage of the agreement.

Advantages of crop share leasing for the tenant

- As rent is a share of the crop rather than a cash payment, the rent is due as the crop is sold and not as a cash payment before seeding.
- The risk associated with crop production and market prices is shared between the tenant and the landowner.
- A longer lease is a possibility encouraging tenant commitment to good farming practices.
- The landowner may share in some of the production expenses.

Disadvantages of crop share leasing for the tenant

- All increases in production that result from the tenant's good management are shared with the landowner.
- The landowner and tenant may disagree on major management decisions, for example, the use of chemicals, fertilizer, summerfallow, or the choice of crops to be grown.

A sample crop share lease agreement is included in the following section. It demonstrates the items that should be included in a lease.

PATTERN OF LEASE AGREEMENTS 1987

REGION	CROPSHARE	CASH
Lethbridge-Medicine Hat	49%	51%
Calgary-Oyen	53%	47%
Red Deer-Killam	42%	48%
Wainwright-Cold Lake	40%	52%
Barrhead-Westlock	51%	49%
Grande Prairie-Peace River	51%	49%

Source: Custom Rate Annual Survey Summary 1987, Alberta Agriculture

LENGTH OF LEASE AGREEMENTS 1987

YEARS	CROP SHARE	CASH
1	57%	49%
2	4%	7%
3	23%	17%
4	3%	5%
5	9%	17%
5+	4%	5%

Source: Custom Rate Annual Survey Summary 1987, Alberta Agriculture

INSTRUCTIONS FOR CROP SHARE LEASING AGREEMENT

1. Refer to the Introduction and General Instruction in this booklet. Consult with your District Agriculturist, Regional Farm Economist and lawyer.
2. Determine an equitable crop share arrangement.
3. The tenant should ensure that the requirements of the DOWER ACT are fulfilled.

   Under the Dower Act of Alberta, which applies equally to both husbands and wives, no sale, lease, mortgage, or other disposition by a married person of the home quarter shall be made during the lifetime of a spouse unless the spouse consents thereto in writing. This acknowledgement must be made apart from the husband or wife.

   Accordingly, if the land to be leased is owned solely by the husband and he has lived on the land since his marriage, his wife must sign the CONSENT OF SPOUSE form, and have the CERTIFICATE OF ACKNOWLEDGEMENT completed by a Commissioner for Oaths. However, if the husband and wife have not lived on the property to be leased, then the husband can sign the DOWER ACT AFFIDAVIT crossing out Statement 2 which does not apply and swear the Affidavit before a Commissioner for Oaths. In this situation, namely where neither has lived on the land since their marriage, the wife's consent is unnecessary. (Samples of these forms are included in Appendix 1.)
4. Complete the AFFIDAVIT OF EXECUTION

   When all parties have signed a Lease Agreement, it is final and binding. If the signatures are witnessed and the witness completes the Affidavit of Execution, it is not necessary at a later date to prove the signatures. If they are not witnessed or the witness does not complete the Affidavit of Execution, such signatures may have to be proved. In order to avoid such a situation, have each witness to the signature sign opposite the signatures and complete the AFFIDAVIT OF EXECUTION before a Commissioner for Oaths. (Sample of this form is included in Appendix 1.)
5. Where required, complete the following supplementary forms as contained in Appendix 1.

   (a) QUOTA ACREAGE ALLOCATION
   When assignment of quota acres is by mutual agreement, complete the QUOTA ACREAGE ALLOCATION form in duplicate prior to the tenant applying for a permit book from the Canadian Wheat Board. Attach one copy of the form to each copy of the lease agreement. It outlines what portion of the total quota acres assigned by the tenant are associated with the rented land. In this way the landlord is assured the desired acres. If the tenant fails to deliver the landlord's grain in accordance with these quota acres, a breach of the lease contract has occurred.

   (b) CAVEAT
   When land is leased for a term of more than three years, the landlord must complete a formal or written agreement. The tenant, to protect his lease for the greater term than three years, must file a CAVEAT against the land in the Land Titles Office. The Caveat form can be completed and forwarded to the Registrar, Land Titles Office, together with $10.00 to cover the fee.

   (c) LEASE RENEWAL FORM
   To renew the lease agreement, complete the LEASE RENEWAL FORM, the DOWER ACT AFFIDAVIT or CONSENT OF SPOUSE, CERTIFICATE OF ACKNOWLEDGEMENT BY SPOUSE, and the AFFIDAVIT OF EXECUTION. A CAVEAT is also required for leases exceeding three years.

   (d) CONSENT TO MAKE MAJOR IMPROVEMENTS
   The tenant should have the landlord complete the CONSENT TO MAKE MAJOR IMPROVEMENTS form in duplicate prior to making major improvements on the rented land. It should be, clearly outlined what buildings or improvements are to be made, who will pay the cost of materials, and how the tenant will be compensated for his labor or any costs which he may incur. Attach one copy of the form to each copy of the lease agreement.

CROP-SHARE LEASE AGREEMENT

This lease made in duplicate this _____ day of _____

A.D. 19 ____ .

BETWEEN:

_____

(landlord's name)

of _____ , _____

(address) (occupation)

in the Province of Alberta, hereinafter called the "landlord" being the registered owner or the purchaser under an Agreement for Sale of land described below.

— and —

_____

(tenant's name)

of _____

(address)

in the Province of Alberta, hereinafter called the "tenant."

1. WITNESS that in consideration of the rents, covenants, promises and agreements contained in this lease on the part of the tenant to be paid, observed and performed, the landlord DOES HEREBY LEASE TO the tenant the following farm lands and premises situated in the Province of Alberta that is to say:

   LAND: (legal description)

   _____

   _____

   _____

   _____

   _____

Together with the following portable buildings, namely:

PORTABLE BUILDINGS:

_____

_____

_____

EXCEPTING AND RESERVING unto the landlord the following lands and buildings, namely:

LANDS RESERVED:

_____

_____

BUILDINGS RESERVED:

_____

_____

2. **TERM:**

This lease shall continue in force on the said land and premises for and during the term of _____ years from the _____ day of _____ A.D. 19 ____, to the _____ day of _____ A.D. 19 ____.
(month) (month)

3. **RENTAL:**

The tenant will pay to the landlord the yearly rental of $ _____ for the use of the said land during the said term: (delete clauses which do not apply)

(1) to be paid in full on or before _____ for each year of this agreement.

(2) to be paid _____ on or before _____ and the balance
(1/2, 1/3 etc.)

on or before _____ for each year of this agreement.

(3) to be paid as follows:

_____

_____

_____

IT IS FURTHER AGREED BY THE LANDLORD AND TENANT AS FOLLOWS, THAT IS TO SAY:

4. The tenant shall make all decisions with respect to farming the said land unless stated otherwise in this agreement.

5. The tenant shall be responsible for all costs of farming the said land unless stated otherwise in this agreement.

6. The tenant will cultivate, seed and harvest the said land in a good husbandlike manner and will not impoverish or waste the same and will use the lands and premises for the purpose of a farm only.

7. The tenant has no rights to sand, gravel, or clay, except for his own use, and he has no rights whatsoever to valuable stone or other such substances existing on, or under the surface of the said land.

8. The tenant will not change the natural course of any waterways on the said land, or cut down trees growing upon the land nor will he permit any other person to do so, without the written consent of the landlord.

9. If the tenant fulfills the terms and conditions of this agreement he shall and may peaceably possess and enjoy the said land for the said term, without any interruption or disturbance from the landlord or any representative of the landlord.

10. The landlord or a representative of the landlord has the right at all reasonable times to attend and inspect the said property. The landlord reserves the right of entry and exit over and upon the land in this agreement and to use any land and buildings expressly excluded from this agreement.

11. If either party shall fail in any respect to carry out any of the provisions of this lease agreement, the other may have the same done, and the costs shall be paid by the party failing to carry out the said provisions.

12. **SEEDING:**

The tenant will seed to crop all the said land under cultivation except the portion to be summerfallowed during the term of this lease. The type and acreage of each crop to be seeded shall be determined by the (delete clause which does not apply)

(1) tenant

(2) tenant and landlord by mutual agreement.

13. **SPRAY, FERTILIZER, AND SEED TREATMENT:**

When the landlord and tenant share the cost of chemicals, fertilizer, and/or seed treatment they shall mutually agree upon the amount and method of application. The actual cost of chemicals, fertilizer, and seed treatment shall be paid by: (delete clause which does not apply)

(1) the landlord and tenant in the same proportion as the share of crop set out in this agreement

(2) the landlord and tenant as specified below:

_____

_____

_____

_____

14. **SUMMERFALLOW:**

The tenant shall summerfallow, in a good husbandlike and proper manner, not less than _____ hectares (acres) of the said land each year during the term of this lease except when otherwise mutually agreed upon by the landlord and tenant.

At the termination of this lease, or any renewal of this lease, if the amount of summerfallow on the within land exceeds the sum of _____ hectares (acres) the landlord will pay to the tenant an amount equal to $ _____ per hectare (acre) for every such hectare (acre) in excess; and in the event the amount of summerfallow does not exceed the sum of _____ hectares (acres) the tenant will pay the landlord an amount equal to $ _____ per hectare (acre) on every hectare (acre) so deficient.

15. **QUOTA ACREAGE ALLOCATION:**

Unless otherwise agreed upon the total quota hectares (acres) allocated to crops grown on the land in this agreement shall not be less than the total acreage on the said land eligible for quota assignment purposes. The quota acreage assigned to each crop shall be determined by: (delete clauses which do not apply)

(1) tenant

(2) landlord

(3) _____

16. **DELIVERY AND SALE OF GRAIN:**

The tenant shall deliver grains agreed upon by the landlord and tenant in accordance with assigned quota hectares (acres) provided for in this agreement. Grain delivery by the tenant shall be made according to prevailing quota and market conditions provided that reasonable delivery conditions exist. The additional cost of delivering quota grains in excess of _____ kilometres (miles) from the land in this agreement shall be the responsibility of the landlord. Non-quota grains shall be delivered for sale at a time mutually agreed upon by the landlord and tenant. Unless otherwise agreed upon, the landlord shall specify the place and date of delivery and the date of sale of his share of non-quota grains, and in so doing assumes all responsibility for extraordinary costs associated with the delivery and sale of his respective share of crop.

17. **STORAGE OF GRAIN:**

The landlord will provide _____ tonnes (bushels) of grain storage. If additional grain storage is required this will be provided by the tenant. In the event that storage facilities do not permit the storage of grain on the land in this agreement, the tenant may remove the said grain to another location for the purposes of storage and such grain shall not be stored in the same bin with grain not grown on land of this lease. Such grain wherever stored shall belong to the landlord and tenant as provided herein.

18. **GOVERNMENT PAYMENTS AND SUBSIDIES:**

In the event that any payment, subsidy, or other reimbursement is made under any government agency, or a marketing agency in connection with grain production and where no contributions are required to participate, the amount paid for the production on the land leased in this agreement shall be paid to the tenant and shall be shared with the landlord according to the ratio of acreage of land leased in this agreement to the total acreage of land farmed by the tenant as recorded in the permit book and the payment identified with the leased land shall be shared in the following proportions: _____ % to the landowner: _____ % to the tenant. The following are excluded: _____

(note that landlords are not eligible to participate in the Western Grain Stabilization Program)

Where contributions are required for entitlement to any payment, subsidy or reimbursement, the landlord and tenant shall mutually agree as to the sharing of the costs and income. The following are included and shared as follows: _____

_____

19. **COMPENSATION:**

Any compensation for property damage shall accrue to the party which has suffered the loss.

20. **TAXES:**

Unless otherwise agreed upon, the payment of all taxes on the land indicated in this lease shall be paid by the landlord.

21. **IMPROVEMENTS:**

The tenant shall not make major improvements, other than what is considered normal repair and maintenance, to the leased land or any other assets identified in this agreement without written permission of the landlord. Major improvements, which without restricting the generality of the term, shall include: water development, erosion control, fencing and building construction, clearing, breaking, and seeding to pasture and hayland. Such consent shall be attached to and form part of the lease agreement. The amount of compensation shall be an amount agreed upon by the landlord and tenant.

Title to all improvements shall vest in the landlord and no improvements shall be sold, removed, disposed of or encumbered without the written consent of the landlord.

22. **REPAIR OF BUILDINGS, FENCES, AND IMPROVEMENTS:**

Responsibility for normal maintenance and repair to buildings, fences, and improvements shall be as follows:

Tenant's Responsibility (list items):

_____

_____

_____

Landlord's Responsibility (list items):

_____

_____

_____

23. **INSURANCE:**

Insurance on all leased buildings in this agreement shall be the responsibility of the landlord.

Unless otherwise agreed upon, the landlord and tenant shall insure crops grown on the land in this agreement against loss from the following hazards:

_____

(All Risk, Hail, Fire, Theft, etc.)

The insurance against the specified risks is referred to as crop insurance hereinafter. Coverage shall consist of the following (crop, level, and amount):

_____

_____

_____

The costs and benefits of this crop insurance shall be shared by: (delete clause which does not apply)

(1) landlord and tenant in the same proportion as their share of crop

(2) _____

_____

When the landlord and tenant do not mutually agree on insurance coverage, the two parties are free to make their own arrangements regarding insurance and in so doing shall absorb the total cost of coverage and receive all the benefits.

24. **SUBLETTING:**

The tenant shall not sublet, or assign this lease, or any part thereof, or any interest therein without obtaining the written consent of the landlord to the sublease or assignment.

25. **GRAIN STORED ON LAND AT COMMENCEMENT OF LEASE:**

In the event that marketing facilities prevent the landlord from delivering the grain previously grown and stored on the said leased premises at the commencement of this lease, it is agreed that such undelivered grain may be stored on the said land for a period not exceeding _____ months after the commencement of this lease without charge for storage or interference from the tenant. However, the landlord must not deliver any other grain in priority to the grain stored on the leased premises. During this period the landlord has the right of entry to obtain any grain or fodder which he has stored on the said property.

26. **GRAIN REMAINING ON LAND AT TERMINATION OF LEASE:**

In the event that harvesting and marketing conditions prevent the tenant from delivering the grain grown and stored on the leased land during the term of this lease, such grain may be harvested and removed from the landlord's property. Harvesting must be completed by May 15 and removal of stored grain completed by June 30 following the termination date of the lease agreement.

27. **RENEWAL:**

The term of this lease may be extended by mutual agreement between the landlord and tenant for a further period upon the same terms and conditions as contained herein, except as otherwise agreed in writing by the parties executing a renewal statement.

28. **INCOMING TENANT:**

An incoming tenant, purchaser, or the landlord shall have the right to enter on the land contained in this agreement after harvest in the fall preceding the expiration of the said term for the purpose of preparing the land for crop.

29. **DEFAULT IN PAYMENTS:**

If the tenant fails to pay to the landlord his share or portion of the whole crop grown on the said lands, or if a breach or default be made in any of the covenants herein contained by the said tenant, then and in every such case it shall be lawful for the said landlord to enter upon the said lands or any part thereof in the name of the whole and to repossess and enjoy the said lands as if this agreement had not been executed.

30. **ARBITRATION:**

Any disagreement which may arise between the contracting parties hereto shall, when a mutually satisfactory settlement cannot otherwise be reached, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be named by each party and a third selected by the two so chosen.

The recommendation of the arbiter or arbitration board shall be accepted as final, except in a matter of law.

31. The contents of this agreement shall for all purposes be construed according to the laws of the Province of Alberta.

32. The terms "landlord" and "tenant" shall include their heirs, executors, administrators, successors and approved assigns in the singular or plural number and feminine and masculine gender when the context or the parties so require and all the covenants shall be construed as being joint and several.

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands and seals.

Dated this _____ day of _____ , A.D. 19 _____ .

_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here

NOTE: If spouse has a Dower Interest, THE DOWER ACT CONSENT OF SPOUSE section IV, sample form V, (page 48) becomes the next page.

Cash lease agreements

Under the terms of a typical cash lease agreement, tenants make predetermined cash payments to landowners for the use of the land resources and any improvements provided. Tenants usually pay all production expenses except land taxes, building insurance and major improvements to the land. All of the production belongs to tenants and they are free to market or use it as they wish. This type of leasing is well suited to absentee landowners, landowners who are not familiar with agricultural practices or those who may desire a steady and stable income. In most cases, a cash lease lets tenants turn their management skills into more profit for themselves than would normally be the case with the share lease, but it usually means they are assuming all of the risk of crop production.

Cash lease arrangements are relatively easy to administer. As the crop belongs to the tenant, the need for determining an accurate yield or dividing the income from the sale of production is not required. In addition to negotiating the amount of rent to be paid, it is necessary to establish when payment is to be made.

A disadvantage to the tenant is that operating capital requirements are increased because of the need to make rent payments, as payment of rent is usually required in advance of marketing the crop. Therefore, special planning may be necessary to ensure that the tenant has a suitable cash flow. This predicament may be complicated further when a slow marketing situation exists over which the tenant has little control. Consequently, a split payment of cash rent is a relatively common feature of cash lease agreements.

The details of how a split payment will be made is a matter of negotiation. An example of a split payment lease is two half payments, one in the fall and one the following spring. This would allow the tenant the opportunity to have marketed some production by the time the spring rent was due.

Some landowners require that a portion of the rent be paid in advance; for example, one-half due in the spring the other half in the fall, after the crops are harvested.

Once the landowner and the tenant have agreed to the timing of rent payments, consideration for early or late payment may be made. For example, an agreed upon credit may be deducted in the case of early payment, or interest added on in the case of late payment.

Advantages of a cash lease for the landowner

- The landowner receives a known fixed return.
- As the landowner's involvement in management is reduced, the possibility for disagreement between owner and tenant on management decisions is reduced.
- As the landowner receives a fixed cash payment, any concern over the integrity of the tenant in regard to splitting the crop is reduced.
- Since marketing and production risks are borne by the tenant, the landowner does not have to be concerned with marketing of crops.

Disadvantages of a cash lease for the landowner

- When increases in commodity prices occur unexpectedly, the landowner is unable to share in these profits.
- In order to account for the reduction in risk that the landowner has experienced by entering into a cash rent arrangement, the net income from rent will likely be less than that attainable in a crop share arrangement.
- The opportunity for income tax management is reduced. In a share arrangement, when reporting of taxable income is done by the cash method, the amount of taxable income is affected through timing of crop sales. Similarly, purchases of fertilizer and seed for the next growing season can be made in the closing months of a tax year, if necessary to reduce the amount of taxable income.
- Cash rent agreements are arrived at on the basis of the current prices for commodities and input costs. Since these change over time, there is a reluctance about entering into a long term lease. A short term lease may not encourage the best farming practices.

Advantages of a cash lease for the tenant

- Tenants will generally have as much freedom in making management decisions regarding the farm operation as they would if it were their own land.
- As the tenant makes the production and management decisions, the potential for disagreement between the landowner and the tenant may be reduced.
- As tenants receive all the benefits of good production and management practices, they have more incentive to strive for high yields.
- The tenant receives the benefit from any windfall profits as a result of unexpected increases in crop price or unusually high yields.
- Accurate yield determination is of less importance as there is no need to divide the crop production or income from the sale of crops.

Disadvantages in a cash lease for the tenant

- Additional operating capital is required to pay cash rent as all or part of the rent will be paid in advance of marketing production.
- The tenant assumes all risk such as uncertainty of yields, changes in markets, increases in fixed and

variable costs and unfavorable weather conditions.

- As the landowner's income is not closely related to the actual yield or prices, the landowner may be reluctant to make any additional needed improvements to the land's productivity.
- In order to avoid the possibility of major changes in yields and prices, cash lease agreements are likely to be quite short term. The lack of security in tenure may make the tenant reluctant to make improvements or use the best cultural practices as the advantage of these is often only realized in the long term.

A sample cash lease agreement is provided in the next section. It illustrates the items that should be included in a written lease.

INSTRUCTIONS FOR CASH LEASING AGREEMENT

1. Refer to the Introduction and General Instructions in this booklet. Consult with your District Agriculturist, Regional Farm Economist and lawyer.

2. Determine an equitable cash payment.

3. The tenant should ensure that the requirements of the DOWER ACT are fulfilled.

   Under the Dower Act of Alberta, which applies equally to both husbands and wives, no sale, lease, mortgage, or other disposition by a married person of the home quarter shall be made during the lifetime of a spouse unless the spouse consents thereto in writing. This acknowledgement must be made apart from the husband or wife.

   Accordingly, if the land to be leased is owned solely by the husband and he has lived on the land since his marriage, his wife must sign the CONSENT OF SPOUSE form, and have the CERTIFICATE OF ACKNOWLEDGEMENT completed by a Commissioner for Oaths. However, if the husband and wife have not lived on the property to be leased, then the husband can sign the DOWER ACT AFFIDAVIT crossing out Statement 2 which does not apply and swear the Affidavit before a Commissioner for Oaths. In this situation, namely where neither has lived on the land since their marriage, the wife's consent is unnecessary. (Samples of these forms are included in Appendix 1.)

4. Complete the AFFIDAVIT OF EXECUTION

   When all parties have signed a Lease Agreement, it is final and binding. If the signatures are witnessed and the witness completes the Affidavit of Execution, it is not necessary at a later date to prove the signatures. If they are not witnessed or the witness does not complete the Affidavit of Execution, such signatures may have to be proved. In order to avoid such a situation, have each witness to the signature sign opposite the signatures and complete the AFFIDAVIT OF EXECUTION before a Commissioner for Oaths. (Sample of this form is included in Appendix 1.)

5. Where required, complete the following supplementary forms as contained in Appendix 1.

   (a) CAVEAT
   When land is leased for a term of more than three years, the landlord must complete a formal or written Agreement. The tenant, to protect his lease for the greater term than three years, must file a CAVEAT against the land in the Land Titles Office. The Caveat form can be completed and forwarded to the Registrar, Land Titles Office, together with $10.00 to cover the fee.

   (b) LEASE RENEWAL FORM
   To renew the lease agreement, complete the LEASE RENEWAL FORM, the DOWER ACT AFFIDAVIT or CONSENT OF SPOUSE, CERTIFICATE OF ACKNOWLEDGEMENT BY SPOUSE, and the AFFIDAVIT OF EXECUTION. A CAVEAT is also required for leases exceeding three years.

   (c) CONSENT TO MAKE MAJOR IMPROVEMENTS
   The tenant should have the landlord complete the CONSENT TO MAKE MAJOR IMPROVEMENTS form in duplicate prior to making major improvements on the rented land. It should be clearly outlined what buildings or improvements are to be made, who will pay the cost of materials, and how the tenant will be compensated for his labor or any costs which he may incur. Attach one copy of the form to each copy of the lease agreement.

CASH LEASE AGREEMENT

This lease made in duplicate this _____ day of _____,

A.D. 19____.

BETWEEN:

_____

(landlord's name)

of _____, _____

(address) (occupation)

in the Province of Alberta, hereinafter called the "landlord" being the registered owner or the purchaser under an Agreement for Sale of land described below.

— and —

_____

(tenant's name)

of _____

(address)

in the Province of Alberta, hereinafter called the "tenant."

1. WITNESS that in consideration of the rents, covenants, promises and agreements contained in this lease on the part of the tenant to be paid, observed and performed, the landlord DOES HEREBY LEASE TO the tenant the following farm lands and premises situated in the Province of Alberta that is to say:

   LAND: (legal description)

   _____

   _____

   _____

   _____

   _____

   _____

   _____

Together with the following portable buildings, namely:

PORTABLE BUILDINGS:

_____

_____

_____

EXCEPTING AND RESERVING unto the landlord the following lands and buildings, namely:

LANDS RESERVED:

_____

_____

BUILDINGS RESERVED:

_____

_____

2. **TERM:**

This lease shall continue in force on the said land and premises for and during the term of _____ years from the _____ day of _____ (month), A.D. 19 ____ to the _____ day of _____ (month), A.D. 19 ____.

3. **RENTAL:**

The tenant will pay to the landlord the yearly rental of _____ share or portion of the whole crop of the different kinds and qualities of grain, hay, fodder and other crops which are grown on the said land during the term of this lease. This undivided share of crop shall become the property of the landlord at the time of harvest.

The tenant will also pay a: (delete clause which does not apply)

(1) cash rental of $ _____ for pasture on the said land during the term of this lease, to be paid on or before _____ (date) each year

(2) a cash rental as outlined below:

_____

_____

_____

_____

_____

IT IS FURTHER AGREED BY THE LANDLORD AND TENANT AS FOLLOWS, THAT IS TO SAY:

4. The tenant shall make all decisions with respect to farming the said land unless stated otherwise in this agreement.

5. The tenant shall be responsible for all costs of farming the said land unless stated otherwise in this agreement.

6. The tenant will cultivate, seed and harvest the said land in a good husbandlike and proper manner and will not impoverish or waste the same and will use the lands and premises for the purpose of a farm only.

7. The tenant has no rights to sand, gravel, or clay, except for his own use, and he has no rights whatsoever to valuable stone or other such substances existing on, or under the surface of the said land.

8. The tenant will not change the natural course of any waterways on the said land, or cut down trees growing upon the land, nor will he permit any other person to do so, without the written consent of the landlord.

9. If the tenant fulfills the terms and conditions of this agreement he shall and may peaceably possess and enjoy the said land for the said term, without any interruption or disturbance from the landlord or any representative of the landlord.

10. The landlord or a representative of the landlord has the right at all reasonable times to attend and inspect the said property. The landlord reserves the right of entry and exit over and upon the land in this agreement and to use any land and buildings expressly excluded from this agreement.

11. If either party shall fail in any respect to carry out any of the provisions of this lease agreement, the other may have the same done, and the costs shall be paid by the party failing to carry out the said provisions.

12. **SEEDING:**

The tenant will seed to crop all the said land under cultivation except the portion to be summerfallowed during the term of this lease. The type and acreage of each crop to be seeded shall be determined by the: (delete clause which does not apply).

(1) tenant

(2) tenant and landlord by mutual agreement
(The consent of the landlord not unreasonably withheld.)

13. **SUMMERFALLOW:**

The tenant shall summerfallow, in a good husbandlike and proper manner, not less than _____ hectares (acres) of the said land each year during the term of this lease except when otherwise mutually agreed upon by the landlord and tenant.

At the termination of this lease, or any renewal of this lease, if the amount of summerfallow on the within land exceeds the sum of _____ hectares (acres) the landlord will pay to the tenant an amount equal to $ _____ per hectare (acre) for every such hectare (acre) in excess; and in the event the amount of summerfallow does not exceed the sum of _____ hectares (acres) the tenant will pay the landlord an amount equal to $ _____ per hectare (acre) on every hectare (acre) so deficient.

14. **STORAGE OF GRAIN:**

The landlord in this agreement will provide _____ tonnes (bushels) of grain storage. If additional grain storage is required, this will be provided by the tenant.

15. **GOVERNMENT PAYMENTS AND SUBSIDIES:**

In the event that any payment, subsidy, or other reimbursement is made under any government agency, or a marketing agency in connection with grain production and where no contributions are required to participate, the amount paid for the production on the land leased in this agreement shall be paid to the tenant and shall be shared with the landlord according to the ratio of acreage of land leased in this agreement to the total acreage of land farmed by the tenant as recorded in the permit book and the payment identified with the leased land shall be shared in the following proportions: _____ % to the landowner: _____ % to the tenant. The following are excluded: _____

(note that landlords are not eligible to participate in the Western Grain Stabilization Program)

Where contributions are required for entitlement to any payment, subsidy or reimbursement, the landlord and tenant shall mutually agree as to the sharing of the costs and income. The following are included and shared as follows: _____

_____

16. **COMPENSATION:**

Any compensation for property damage shall accrue to the party which has suffered the loss.

17. **TAXES:**

Unless otherwise agreed upon, the payment of all taxes on the land indicated in this lease shall be paid by the landlord.

18. **IMPROVEMENTS:**

The tenant shall not make major improvements, other than what is considered normal repair and maintenance, to the leased land or any other assets identified in this agreement without written permission of the landlord. Major improvements, which without restricting the generality of the term, shall include: water development, erosion control, fencing and building construction, clearing, breaking, and seeding to pasture and hayland. Such consent shall be attached to and form part of the lease agreement. The amount of compensation shall be an amount agreed upon by the landlord and tenant.

Title to all improvements shall vest in the landlord and no improvements shall be sold, removed, disposed of, or encumbered without the written consent of the landlord.

19. **REPAIR OF BUILDINGS, FENCES, AND IMPROVEMENTS:**

Responsibility for normal maintenance and repair to buildings, fences, and improvements shall be as follows:

Tenant's Responsibility (list items):

_____

_____

_____

Landlord's Responsibility (list items):

_____

_____

_____

20. **INSURANCE:**

Insurance on all leased buildings in this agreement shall be the responsibility of the landlord.

The tenant is free to make is own arrangements regarding crop insurance and hail insurance and in so doing shall absorb the total cost of coverage and receive all the benefits.

21. **SUBLETTING:**

The tenant shall not sublet, or assign this lease, or any part thereof, or any interest therein without obtaining the written consent of the landlord to the sublease or assignment.

22. **GRAIN STORED ON LAND AT COMMENCEMENT OF LEASE:**

In the event that marketing facilities prevent the landlord from delivering the grain previously grown and stored on the said leased premises at the commencement of this lease, it is agreed that such undelivered grain may be stored on the said land for a period not exceeding _____ months after the commencement of this lease without charge for storage or interference from the tenant. However, the landlord must not deliver any other grain in priority to the grain stored on the leased premises. During this period the landlord has the right of entry to obtain any grain or fodder which he has stored on the said property.

23. **GRAIN REMAINING ON LAND AT TERMINATION OF LEASE:**

In the event that harvesting and marketing conditions prevent the tenant from delivering the grain grown and stored on the leased land during the term of this lease, such grain may be harvested and removed from the landlord's property. Harvesting must be completed by May 15 and removal of stored grain completed by June 30 following the termination date of the lease agreement.

24. **RENEWAL:**

The term of this lease may be extended by mutual agreement between the landlord and tenant for a further period upon the same terms and conditions as contained herein, except as otherwise agreed in writing by the parties executing a renewal statement.

25. **INCOMING TENANT:**

An incoming tenant, purchaser, or the landlord shall have the right to enter on the land contained in this agreement after harvest in the fall preceding the expiration of the said term for the purpose of preparing the land for crop.

26. **DEFAULT IN PAYMENTS:**

When the tenant does not make payment of the rental in accordance with the terms and conditions of this lease agreement, the current year's rental and any further payments owing for that year shall become due and payable immediately, and the landlord may again repossess and enjoy the said land as if this agreement had not been executed.

27. **ARBITRATION:**

Any disagreement which may arise between the contracting parties hereto shall, when a mutually satisfactory settlement cannot be reached, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be named by each party and a third selected by the two so chosen.

The recommendation of the arbiter or arbitration board shall be accepted as final, except in a matter of law.

28. The contents of this agreement shall for all purposes be construed according to the laws of the Province of Alberta.

29. The terms "landlord" and "tenant" shall include their heirs, executors, administrators, successors and approved assigns in the singular or plural number and feminine and masculine gender when the context or the parties so require and all the covenants shall be construed as being joint and several.

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands and seals.

Dated this _____ day of _____ , A.D. 19 _____ .

_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here

NOTE If spouse has a Dower Interest, THE DOWER ACT CONSENT OF SPOUSE section IV, sample form V, (page 48) becomes the next page

Flexible Cash-Plus Leases

The greatest advantage of a crop share lease is the flexibility in the level of rent paid. Rent as a share of the crop is dependent upon changes in price and yield. In a crop share rental there is no provision that guarantees the size of the return or if the landowner will receive any return. A fixed cash lease overcomes this disadvantage in that a predetermined rent is paid. A cash lease, however, excludes the landowner from sharing in high prices or high production levels. For example, landowners locked into long term cash lease agreements established on the basis of $1.25 per bushel barley may become dissatisfied with the amount of rent they are receiving when the price of barley is $2.75 per bushel. Similarly, the tenant could be in a difficult position if the contract was negotiated on the basis of $2.75 per bushel barley and the price drops to $1.25 per bushel. Of course the same situation also applies to fluctuating yields. A cash-plus lease is designed to work around these problems in cash and crop share agreements by establishing the rent on the basis of a basic level while allowing the amount of rent paid to fluctuate up or down in accordance with changing prices and yields.

Advantages of a flexible cash-plus lease

- By sharing the price and yield risk with the tenant, the landowner would receive increased rent when prices move upwards.
- The tenant is not required to pay a high cash rent in a year of low yield or prices.
- A cash-plus lease may facilitate longer term leasing arrangements.

Disadvantages of a flexible cash-plus lease

- Adjustment for yield in a cash-plus lease agreement requires a landlord to be reasonably satisfied that the tenant accurately reports yields.

A possible rental arrangement which may be helpful is described below. Suppose the local cash rent was $40 per acre or a cropshare of 1/3:2/3. Perhaps it would be possible to negotiate a partial cash payment of $20 per acre cash rent plus a portion of the crop above a base yield. Using an average 30 bushel wheat crop at $4.25 per bushel the options are:

Cash rent $40/ac
Crop share $42/ac = (30 bu x $4.25 x 1/3 share)
Cash plus $41/ac = $20 + (30 bu x $4.25 x 1/6 share)

If the yield in a particular year dropped to 20 bushels per acre, then:

Cash rent $40/ac
Crop share $28/ac = (20 bu x $4.25 x 1/3 share)
Cash plus $34/ac = $20 + (20 bu x $4.25 x 1/6 share)

If the yield increased to 40 bushels per acre in a particular year, then:

Cash rent $40/ac
Crop share $57/ac = (40 bu x $4.25 x 1/3 share)
Cash plus $48/ac = $20 + (40 bu x $4.25 x 1/6 share)

The above method guarantees the landowner a minimum return plus a share of the crop. In poor years the tenant is not stuck with a high cash rent prior to harvest. In good years the landowner receives a rent larger than the cash rent.

For landlords that have close ties to their tenants and wish to see them succeed, introducing this flexibility will take some pressure off tenants in poor years. These shortfalls can be made up in future good years or long run yield improvements.

A sample flexible lease is included in the next section. It demonstrates the items that should be included in the lease.

INSTRUCTIONS FOR FLEXIBLE CASH LEASING AGREEMENT

1. Refer to the Introduction and General Instructions in this booklet. Consult with your District Agriculturist, Regional Farm Economist and lawyer.

2. Determine an equitable cash payment and crop share arrangement.

3. The tenant should ensure that the requirements of the DOWER ACT are fulfilled.

   Under the Dower Act of Alberta, which applies equally to both husbands and wives, no sale, lease, mortgage, or other disposition by a married person of the home quarter shall be made during the lifetime of a spouse unless the spouse consents thereto in writing. This acknowledgement must be made apart from the husband or wife.

   Accordingly, if the land to be leased is owned solely by the husband and he has lived on the land since his marriage, his wife must sign the CONSENT OF SPOUSE form, and have the CERTIFICATE OF ACKNOWLEDGEMENT completed by a Commissioner for Oaths. However, if the husband and wife have not lived on the property to be leased, then the husband can sign the DOWER ACT AFFIDAVIT crossing out Statement 2 which does not apply and swear the Affidavit before a Commissioner for Oaths. In this situation, namely where neither has lived on the land since their marriage, the wife's consent is unnecessary. (Samples of these forms are included in Appendix 1.)

4. Complete the AFFIDAVIT OF EXECUTION

   When all parties have signed a Lease Agreement, it is final and binding. If the signatures are witnessed and the witness completes the Affidavit of Execution, it is not necessary at a later date to prove the signatures. If they are not witnessed or the witness does not complete the Affidavit of Execution, such signatures may have to be proved. In order to avoid such a situation, have each witness to the signature sign opposite the signatures and complete the AFFIDAVIT OF EXECUTION before a Commissioner for Oaths. (Sample of this form is included in Appendix 1.)

5. Where required, complete the following supplementary forms as contained in Appendix 1.

   (a) CAVEAT
   When land is leased for a term of more than three years, the landlord must complete a formal or written agreement. The tenant, to protect his lease for the greater term than three years, must file a CAVEAT against the land in the Land Titles Office. The Caveat form can be completed and forwarded to the Registrar, Land Titles Office, together with $10.00 to cover the fee.

   (b) LEASE RENEWAL FORM
   To renew the lease agreement, complete the LEASE RENEWAL FORM, the DOWER ACT AFFIDAVIT or CONSENT OF SPOUSE, CERTIFICATE OF ACKNOWLEDGEMENT BY SPOUSE, and the AFFIDAVIT OF EXECUTION. A CAVEAT is also required for leases exceeding three years.

   (c) CONSENT TO MAKE MAJOR IMPROVEMENTS
   The tenant should have the landlord complete the CONSENT TO MAKE MAJOR IMPROVEMENTS form in duplicate prior to making major improvements on the rented land. It should be clearly outlined what buildings or improvements are to be made, who will pay the cost of materials, and how the tenant will be compensated for his labor or any costs which he may incur. Attach one copy of the form to each copy of the lease agreement.

FLEXIBLE CASH LEASE AGREEMENT

This lease made in duplicate this _____ day of _____,

A.D. 19 ____.

BETWEEN:

_____

(landlord's name)

of _____ , _____

(address) (occupation)

in the Province of Alberta, hereinafter called the "landlord" being the registered owner or the purchaser under an Agreement for Sale of land described below.

— and —

_____

(tenant's name)

of _____

(address)

in the Province of Alberta, hereinafter called the "tenant."

1. WITNESS that in consideration of the rents, covenants, promises and agreements contained in this lease on the part of the tenant to be paid, observed and performed, the landlord DOES HEREBY LEASE TO the tenant the following farm lands and premises situated in the Province of Alberta, that is to say:

   LAND: (legal description)

   _____

   _____

   _____

   _____

   _____

   _____

   _____

Together with the following portable buildings, namely:

PORTABLE BUILDINGS:

_____

_____

_____

EXCEPTING AND RESERVING unto the landlord the following lands and buildings, namely:

LANDS RESERVED:

_____

_____

BUILDINGS RESERVED:

_____

_____

2. **TERM:**

This lease shall continue in force on the said land and premises for and during the term of _____ years from the _____ day of _____ (month) A.D. 19 ____, to the _____ day of _____ (month) A.D. 19 ____.

Any overholding by the tenant shall be considered a trespass.

3. **RENTAL:**

The tenant will pay to the landlord the yearly rental equivalent to the total value of all initial, adjustment, interim, and final payments payable to a producer on _____ tonnes (bushels) of _____ (grade) (grain) delivered at _____ (location), in the Province of Alberta.

Payment of the rental will be made as follows: (delete clauses which do not apply)

(1) For each year of the agreement, $ _____ payable on or before _____ and the balance payable within thirty (30) days after mailing of the final payment to producers has commenced.

(2) For each year of the agreement, $ _____ payable on or before _____

with a further $ _____ payable on or before _____ and the balance payable within thirty (30) days after mailing of the final payment to producers has commenced.

(3) For each year of the agreement, _____ the initial payment
(1/2, 1/3 etc.)

for the grain specified herein payable on _____
with the balance payable within thirty (30) days after mailing of the final payment to producers has commenced.

(4) _____

_____

_____

_____

IT IS FURTHER AGREED BY THE LANDLORD AND TENANT AS FOLLOWS, THAT IS TO SAY:

4. The tenant shall make all decisions with respect to farming the said land unless stated otherwise in this agreement.

5. The tenant shall be responsible for all costs of farming the said land unless stated otherwise in this agreement.

6. The tenant will cultivate, seed and harvest the said land in a good husbandlike and proper manner and will not impoverish or waste the same and will use the lands and premises for the purpose of a farm only.

7. The tenant has no rights to sand, gravel, or clay, except for his own use, and he has no rights whatsoever to valuable stone or other such substances existing on, or under the surface of the said land.

8. The tenant will not change the natural course of any waterways on the said land, or cut down trees growing upon the land, nor will he permit any other person to do so, without the written consent of the landlord.

9. If the tenant fulfills the terms and conditions of this agreement, he shall and may peaceably possess and enjoy the said land for the said term without any interruption or disturbance from the landlord or any representative of the landlord.

10. The landlord or a representative of the landlord has the right at all reasonable times to attend and inspect the said property. The landlord reserves the right of entry and exit over and upon the land in this agreement and to use any land and buildings expressly excluded from this agreement.

11. If either party shall fail in any respect to carry out any of the provisions of this lease agreement, the other may have the same done, and the costs shall be paid by the party failing to carry out the said provisions.

12. **SEEDING:**

The tenant will seed to crop all the said land under cultivation except the portion to be summerfallowed during the term of this lease. The type and acreage of each crop to be seeded shall be determined by the: (delete clause which does not apply).

(1) tenant

(2) tenant and landlord by mutual agreement.
(The consent of the landlord not unreasonably withheld.)

13. **SUMMERFALLOW:**

The tenant shall summerfallow, in a good husbandlike and proper manner, not less than _____ hectares (acres) of the said land each year during the term of this lease except when otherwise mutually agreed upon by the landlord and tenant.

At the termination of this lease, or any renewal of this lease, if the amount of summerfallow on the within land exceeds the sum of _____ hectares (acres) the landlord will pay to the tenant an amount equal to $ _____ per hectare (acre) for every such hectare (acre) in excess; and in the event the amount of summerfallow does not exceed the sum of _____ hectares (acres) the tenant will pay the landlord an amount equal to $ _____ per hectare (acre) on every hectare (acre) so deficient.

14. **STORAGE OF GRAIN:**

The landlord in this agreement will provide _____ kilograms (bushels) of grain storage. If additional grain storage is required, this will be provided by the tenant. In the event that storage facilities do not permit the storage of grain on the land in this agreement, the tenant may remove the said grain to another location for the purpose of storage.

15. **GOVERNMENT PAYMENTS AND SUBSIDIES:**

In the event that any payment, subsidy, or other reimbursement is made under any government agency, or a marketing agency in connection with grain production and where no contributions are required to participate, the amount paid for the production on the land leased in this agreement shall be paid to the tenant and shall be shared with the landlord according to the ratio of acreage of land leased in this agreement to the total acreage of land farmed by the tenant as recorded in the permit book and the payment identified with the leased land shall be shared in the following proportions: _____ % to the landowner: _____ % to the tenant. The following are excluded: _____

(note that landlords are not eligible to participate in the Western Grain Stabilization Program)

Where contributions are required for entitlement to any payment, subsidy or reimbursement, the landlord and tenant shall mutually agree as to the sharing of the costs and income. The following are included and shared as follows: _____

_____

16. **COMPENSATION:**

Any compensation for property damage shall accrue to the party which has suffered the loss.

17. **TAXES:**

Unless otherwise agreed upon, the payment of all taxes on the land indicated in this lease shall be paid by the landlord.

18. **IMPROVEMENTS:**

The tenant shall not make major improvements, other than what is considered normal repair and maintenance, to the leased land or any other asset identified in this agreement, without written permission of the landlord. Major improvements, which without restricting the generality of the term, shall include: water development, erosion control, fencing and building construction, clearing, breaking, and seeding to pasture and hayland. Such consent shall be attached to and form part of the lease agreement. The amount of compensation shall be an amount agreed upon by the landlord and tenant.

Title to all improvements shall vest in the landlord and no improvements shall be sold, removed, disposed of, or encumbered without the written consent of the landlord.

19. **REPAIR OF BUILDINGS, FENCES, AND IMPROVEMENTS:**

Responsibility for normal maintenance and repair to buildings, fences, and improvements shall be as follows:

Tenant's Responsibility (list items):

_____

_____

_____

_____

_____

Landlord's Responsibility (list items):

_____

_____

_____

_____

20. **INSURANCE:**

Insurance on all leased buildings in this agreement shall be the responsibility of the landlord.

The tenant is free to make his own arrangements regarding crop insurance and hail insurance and in so doing shall absorb the total cost of coverage and receive all the benefits.

21. **SUBLETTING:**

The tenant shall not sublet, or assign this lease, or any part thereof, or any interest therein without obtaining the written consent of the landlord to the sublease or assignment.

22. **GRAIN STORED ON LAND AT COMMENCEMENT OF LEASE:**

In the event that marketing facilities prevent the landlord from delivering the grain previously grown and stored on the said leased premises at the commencement of this lease, it is agreed that such undelivered grain, may be stored on the said land for a period not exceeding _____ months after the commencement of this lease without charge for storage or interference from the tenant. However, the landlord must not deliver any other grain in priority to the grain stored on the leased premises. During this period the landlord has the right of entry to obtain any grain or fodder which he has stored on the said property.

23. **GRAIN REMAINING ON LAND AT TERMINATION OF LEASE:**

In the event that harvesting and marketing conditions prevent the tenant from delivering the grain grown and stored on the leased land during the term of this lease, such grain may be harvested and removed from the landlord's property. Harvesting must be completed by May 15 and removal of stored grain completed by June 30 following the termination date of the lease agreement.

24. **RENEWAL:**

The term of this lease may be extended by mutual agreement between the landlord and tenant for a further period upon the same terms and conditions as contained herein, except as otherwise agreed in writing by the parties executing a renewal statement.

25. **INCOMING TENANT:**

An incoming tenant, purchaser, or the landlord shall have the right to enter on the land contained in this agreement after harvest in the fall preceding the expiration of the said term for the purpose of preparing the land for crop.

26. **DEFAULT IN PAYMENTS:**

When the tenant does not make payment of the rental in accordance with the terms and conditions of this lease agreement, the current year's rental and any further payments owing for that year shall become due and payable immediately, and the landlord may again repossess and enjoy the said land as if this agreement had not been executed.

When the rent payable is in arrears, the landlord or a person authorized in writing by the landlord may enter upon the rented land and seize any goods, chattels and crop whether standing or harvested, for the rent or any amount in arrears and may sell the same. The landlord may use any other means under the law of recovering any rent payable under this agreement.

27. **ARBITRATION:**

Any disagreement which may arise between the contracting parties hereto shall, when a mutually satisfactory settlement cannot be reached, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be named by each party and a third selected by the two so chosen.

The recommendation of the arbiter or arbitration board shall be accepted as final, except in a matter of law.

IT IS FURTHER AGREED BY THE LANDLORD AND TENANT AS FOLLOWS, THAT IS TO SAY:

28. The contents of this agreement shall for all purposes be construed according to the laws of the Province of Alberta.

29. The terms "landlord" and "tenant" shall include their heirs, executors, administrators, successors and approved assigns in the singular or plural number and feminine and masculine gender when the context or the parties so require and all the covenants shall be construed as being joint and several.

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands and seals.

Dated this _____ day of _____ , A.D. 19 _____ .

_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here

NOTE: If spouse has a Dower Interest, THE DOWER ACT CONSENT OF SPOUSE section IV, sample form V. (page 48) becomes the next page.

Calculating Rent

When considering land rental calculations, one is first inclined to think of the going rate. The going rate generally reflects the past supply and demand situation regarding the availability of land and the desire for leasing it. Once established, it has considerable influence in determining rates or sharing arrangements. While the going rate may be useful as a guide, it does not reflect specific conditions such as: the quality and condition of the land, risk sharing, lease duration, payment schedules, grain storage and management skills. The landowner and tenant must consider these factors when setting the rate for their agreement. Below is sample of the going rates in 1987.

The following discussion may be used to assist tenants and landowners in negotiating their rental rates.

The owner's view

A landowner is faced with two questions when considering entering a lease agreement.

— Can I cover my cash costs?
— Will I be satisfied with the level of rent?

• Can I cover my cash costs?

Associated with landownership are obligations which must be paid in cash. These include land taxes, perhaps loan payments (land and buildings), utilities and insurance. For landlords operating under a crop share agreement, other cash outlays for fertilizer, chemicals and seed may be required. As a minimum, landlords would like to receive enough rent to cover all of the cash obligations that arise from owning land. It may not always be possible especially if a large debt load exists. The following outline may be of assistance to identify the cash obligations of the land that it is proposed will be rented out. Include the equipment and building loan payments only if the renter will be using the equipment and buildings.

The example shows a total cash obligation of $20 per acre. If the rent paid is greater than this amount, the extra remains in the landlord's pocket. If the rent received, either cash or crop share, is less than this amount, owners must decide how dear they hold land ownership. This is the first step in analyzing the owner's cost in maintaining ownership in land that will be rented out.

CASH OUTLAYS

Land taxes	$ 7.00
Seed	
Fertilizer	6.00
Pesticides	6.00
Crop/hail insurance	
Property and liability insurance	1.00
Utilities	
Land loan payment	
Building loan payment (only if used by renter)	
Equipment loan payment (if only used by renter)	
Other	
Total cash obligations	$ 20.00

• Will I be satisfied with the level of rent?

Once the cash obligations have been determined, consideration should also be given to the very basic decision to own land. Rewards of owning property include an economic return which is made up of revenue earned and capital value increase. As recent years show, revenue earned or capital value may not always increase. Several noneconomic features of land ownership are also often referred to in land ownership. These may include sentimental attachment to a particular piece of ground, pride of ownership and social status considerations. This section suggests some simple considerations to use in deciding whether to maintain ownership. It is not intended to be a thorough economic analysis of land investment.

SURVEY OF MARKET RATE 1987

Region		Range $/Acre	Most Common	Average
Lethbridge-Medicine Hat	irrigated	28-100	50-60	51
	dryland	10-30	12-26	19
Calgary-Oyen		10-45	20-35	26
Red Deer-Killam		8-40	16-30	22
Wainwright-Cold Lake		10-30	15-30	21
Barrhead-Westlock		18-36	15-30	21
Grande Prairie-Peace River		7-25	12-20	14

Source: Custom Rate Survey Summary, Alberta Agriculture 1987

KNOWING YOUR CASH COSTS AND FINANCIAL RETURN CONSIDERATIONS

RETURN ON LAND EQUITY

$ 6400	x	8	%	÷	160	=	$32/acre
Beginning of year equity		Term deposit rate			Acres		

RETURN ON BUILIDING EQUITY

$ 5000	x	8	%	÷	160	=	$2.50/acre
Beginning of year equity		Term deposit rate			Acres		

RETURN OF BUILIDING EQUITY (If building used by renter)

$ 5000	x	$ 4500		÷	160	=	$3.12/acre
Beginning of year equity		End of year equity value			Acres		

RETURN ON EQUIPMENT EQUITY (If equipment used by renter)

$ 30000	x	8	%	÷	160	=	$15.00/acre
Beginning of year equity		Bank deposit rate			Acres		

RETURN OF EQUIPMENT EQUITY (If equipment used by renter)

$ 30000	x	$ 27000		÷	160	=	$18.75/acre
Beginning of year equity		End of year equity			Acres		

TOTAL FINANCIAL RECOVERY PER ACRE $71.37

An owner of land has four options — use it, not use it, let someone else use it, or sell it. An owner who does not want to farm or let the land go to weeds can rent it out or sell it. If someone else uses it an owner expects to be paid rent. The money received from rent, less cash obligations, can be compared to an alternate investment — term deposits for example. Term deposits are chosen as the alternate here since they are readily available and reasonably secure.

For example, the market value of the land is $500 per acre with $400 per acre equity. If the land was sold and the $400 placed in an 8 per cent term deposit, its expected return would be $32 per acre.

Return on equity in land

$400/acre	x	8%		
Beginning of year equity		Term deposit rate	=	$32/acre

(Include only the equity portion in the calculation.)

This $32 could be earned if the land were sold. Compare this with what may be earned from rent. Suppose the going rate is $40 per acre less the $20 per acre cash obligations; selling out yields $12 per acre more ($32-$20) than owning the land. Remember this ignores future capital value change, income tax considerations and many noneconomic considerations.

The decision to maintain ownership may limit the return on equity tied up in land ownership. A landowner may have to adjust the expectation of financial return to reflect the strength of the desire to retain ownership. The difference between the rent paid and deposit return (or other nonfarm investment) is money forgone and represents a cost of course, but it is a cost borne by the landowner's decision. It is not the tenant's responsibility to compensate the owner.

Similar discussion can focus on the evaluation of buildings in a lease contract. If the landowner is providing the tenant with access to this type of depreciable asset, the owner wants to be compensated for the decline in equity values while the buildings are leased.

Once again the owner has four choices — use the buildings, not use buildings, rent or sell. For example, if the owner has grain bins that the tenant does not need, the owner should realize that if they are not for sale, a return on equity in them should not be expected from the renter. The owner alone is bearing the cost of the forgone revenue by not selling them.

However, if the tenant decides to rent the bins ($5,000 equity value) even though the owner would just as soon sell them, the calculation is a little different, as shown below. The landowner, if leaving the

bins for the tenant's use, should expect to be no worse off at the end of the lease than if they were sold now. The owner needs a return on the equity and compensation for depreciation.

The return on equity again compares to the equity value placed in a term deposit.

$5,000	x	8%	÷	160	= $2.50/acre
Beginning year equity		Bank Deposit rate		Acres	

Building equity recovery involves estimating the decline in equity value from beginning year equity value ($5,000) to the year-end equity value ($4,500) of the bins. The ($5,000 - 4,500) 160 acres or $3.12 per acre is what the landlord wants to recover for depreciation if the buildings are rented out.

A return of $5.60 per acre (2.50 + 3.12) for buildings would leave the landlord no worse off than if the bins were sold immediately. Realize of course that many buildings on the farm are worth very little if they have to be moved to be sold.

The same thoughts apply to equipment, for example, irrigation sprinklers valued at $30,000 in equity. If the tenant wants to use them while the owner would rather sell them, the owner should be paid enough to get a return on equity, and to cover a decline in equity, and a year later, to be no worse off than if these items were sold immediately. The following recovery of equity calculation estimates the beginning of the year value and the end of the year value; the difference is divided by the number of acres in the lease. It does not account for depreciation or tax depreciation, rather it seeks to regain the decline in equity value caused by time and use.

Return on equity in equipment

$30,000	—	$27,000	÷	160	=	$18.75/acre
Beginning year equity		Year end equity		Acres		Cost/ac

If the owner has no intention of selling the equipment, the owner should not expect a term deposit equivalent return from the tenant using the equipment.

The decision not to sell is a cost to the owner that may not be fully extracted from the tenant.

Return on equity in equipment

$30,000	x	8%	÷	160	=	$15.00
Beginning year equity		Bank deposit rate		Acres		Cost/ac

An interest return on the beginning of the year equity value is also included.

Once the cash costs have been determined and the investment return considerations evaluated, they can be weighed individually or collectively against the going market rate of rent.

If the rent offered is not adequate, the landowner must face the decision of maintaining ownership and bearing some of the cost or selling out and pursuing the best other opportunity. Real life situations are rarely this simple. The answer to "Will I be satisfied with the level of rent?" rests with the land owner and investor and their consideration of economic and noneconomic issues.

Tenants will never know the landlord's exact cost structure and really are not concerned about it. If the rental rates are higher than tenants are willing to pay, they do not have to rent.

The tenant's view — making a profit

The purpose of the tenant's income approach is to determine the maximum rent that can be paid, based on expected yields, prices and production costs.

Before renting land, tenants must assess whether it will be profitable and worth their effort. The added acres may represent more efficient utilization of labor and capital requirements or be an unwanted burden.

The type of rental agreement may influence the profit potential of the operation as well. A cash lease, with its additional operating capital requirements, would probably have a different effect on profit from that of a crop share lease. Utilizing an enterprise budget may be of assistance in determining the implications of various rental decisions. The following example illustrates the types of considerations that a tenant may be required to make while contemplating a rental agreement.

The enterprise budget on page 37 includes income and expense items which will actually be incurred if the land is rented. Fixed costs are not included as these expenses are already being incurred by the farm and will not change with a greater land base. However, there are many instances where additional machinery is required, and these extra costs must be included.

Example: Bob Young, who owns 320 acres, wishes to assess the effect of renting 160 acres of land for $40 an acre.

In this example, it is estimated that the total revenue from farming is $129 per acre. The tenant's total cost of production is $63 per acre. The maximum amount of rent that could be paid is $66 per acre, providing the expected yields and prices were obtained. Note: on worksheet only 150 acres will be used. Tenant and landowner will have to negotiate whether cash rent will be based on total acres or acres cropped.

The minimum costs that should be considered and covered are the variable cash costs of the rental project itself. In this example, if these were the only costs considered, the maximum rent would be: $129 — $63 = $66. The tenant must decide then if this amount is enough to make the rental project worth

CROP ENTERPRISE BUDGET

CROP wheat

NUMBER OF ACRES 150

ESTIMATED RETURNS

YIELD per acre 33

PRICE per 3.90

RETURNS per acre $129

VARIABLE COSTS	APPLI-CATION RATE	$ PRICE	$ COST PER ACRE	# OF ACRES	TOTAL COST $	TOTAL UNITS USED
SEED			10			
FERTILIZER			20			
CHEMICALS			13			
OTHER						
Repairs			3			
SUPPLIES						
CROP AND HAIL INSURANCE			4			
MACHINERY - FUEL AND LUBE			8			
CUSTOM WORK HIRED						
INTEREST ON OPERATING CAPITAL			5			

TOTAL VARIABLE COSTS PER ACRE 63

RETURN OVER VARIABLE COSTS 129 - 63 = 66

while. Bob must keep in mind that the whole point of the project is to make the home farm more profitable and cover its existing costs (land, machinery, labor). By just covering crop expenses and time (i.e. giving all $66 for rent) Bob accomplishes nothing. Therefore, Bob must estimate how much he wants to keep back. Suppose Bob deems $30 per acre ($4,500) as an acceptable return. He is willing to offer $36 per acre for rent.

The tenant and landlord can now decide who will bend. If the going rate is $30 per acre, Bob can rent, cover all his costs and feel a good deal was reached. Since the going rate is $40 per acre, the landlord is likely to want $40 per acre. Bob then must decide if he wishes to take on this project at the $40 per acre level.

It may be necessary for the tenant to take into consideration the noncash factors that are involved in the decision-making process. For example, shorter life expectancy for the machinery can be anticipated as a result of farming the additional acres. As well, the tenant assumes all the risk associated with changes in yields and prices in cash rent agreements. Because further operating capital is required, the magnitude of this risk is larger. These have to be weighed against the opportunity of increasing net income.

In addition to increased net farm income, other advantages of leasing the land may be a reduction in the unit cost of inputs as a result of volume discounts and more efficient utilization of labor and machinery resources.

There will be instances, unlike the previous example, when the amount of land to be rented will require a major reorganization of the farm's operation. In some cases capital requirements, labor, and machinery resources will be inadequate to farm the proposed additional acreage. In such a situation, the farm manager would be advised to use a complete budget or operating plan to assess all of the expected changes in the farm's organization.

How to Compare Cash Rent and Crop Share

- **Interest** — Cash rentals are usually paid in full in advance of harvest or half in the spring and the balance just after harvest. Full payment in spring carries no risk to the landlord and the owner can deposit the money immediately to earn interest. If only half the money is received in the spring, the owner loses interest on the other half for about five months. For example, suppose $20 per acre rent is due on May 1 and $20 per acre is due on October 1. If the bank rates are 8 per cent, this owner loses $.67 per acre in interest from May 1 to October 1. This is not a large amount but illustrates that tenants who pay cash rent in spring could request a slight reduction for this reason. The success in negotiating this point will depend on the attitude of the landowner.

  Under a crop share, no rent may be paid until the following spring, depending on quotas, weather and price movement. Using a February 1 selling date for example, the owner loses about 2/3 of 1 per cent per month (8% 12) at the bank when the owner cannot obtain cash rent in the spring. From May 1 to February 1, this could total 6 per cent. Using a possible $40 per acre crop share rent, this is a loss of $2.40 per acre. The cash rent equivalent payable on May 1 before seeding would be $40 - 2.40 = $37.60.

- **Risk** — Under a crop share agreement, clearly the landowner shares fully in the risk of the price and yield. This income risk is much larger than with cash rent. Therefore, the landowner may accept less if the lease is a cash rental. Again, how much the owner is prepared to give up for the decreased risk depends on the owner's attitude. The owner's attitude can be influenced by the owner's view of the competence of the tenant and the cropping program.

  In the previous example, revenues are estimated to be $129 per acre. If a 10 per cent cushion for risk is required, then 3 per cent (1/3 of 10%) would be deducted from the landlord's share of the $40 per acre previously estimated. The landowner should be willing to take a lesser amount as cash rent since the owner would have no risk.

  Tenants who pay a cash rent in the spring may request this lower rental since owners receive their full rent immediately. How much less? Again, it depends on the owners' attitude. It is strictly a question of how attracted or repelled they are by risk.

  To roughly approximate the appropriate rent, take 1/3 of 10 per cent of $129 per acre ($4.29/acre) and subtract it from $40 per acre. A suitable cash rent would be $35.71 per acre.

- **Operating expense** — Many crop share agreements allow the owner to pay part of the fertilizer and chemical expenses. If owners are contributing to operating expenses, they will use their own cash or take out an operating loan. Either way, they are losing money paying interest or not earning interest. They should include in their cost structure an allowance for its recovery, just as the tenant does. If these expenses are deducted from the crop share at the time of sale and are not actual cash outlays, any concern about interest cost for the landowner is negated.

  When adjusting a traditional 1/3:2/3 crop share agreement to a cash rent basis all the factors of

risk, interest lost and operating expense must be considered.

Starting point:
owner income $129 per acre x 33% = $42.57
tenant income $129 per acre x 67% = $86.43

Adjusting for risk — say 10%
owner income $129 x (1/3 of 10%)
= $4.26 reduction per acre rent.

Adjusting for interest on delayed payment
May 1 to February 1 = 9 months @ .67% per month (8% per year)
(42.57 x 6%) = $2.55 reduction per acre

Adjusting for operating interest (if landlord does not pay part of expenses)
May 1 to February 1 = 9 months @ .67% per month ($10 per acre paid by landlord toward crop expenses.)
$10 per acre x 6% = $.60 reduction per acre

Adjusting crop share to cash rent basis
$42.57 - 4.26 - 2.55 - .60 = $35.16

$$\frac{\$35.16}{\$129} = 27\%$$

When compared to the total income per acre, the cash rent in this example is 6 per cent smaller than the 1/3 crop share (33 per cent - 27 per cent). Most owners do a similar mental calculation. A crop share arrangement can certainly return more to the landlord willing to wait and get in on a few good crops. For those wanting not to be involved and preferring immediate and secure cash, they can use the above calculations to persuade themselves that they are not missing out on too much and can still be well off.

Other General Lease Considerations

Crop rotation

A common situation involves the owner's request that the tenant prepare the land at the beginning or end of the lease in a way that suits the landlord. The owner may say to the tenant, "Take the land, use it as you wish, but return it to its original condition when the lease is over." The lease agreement should deal with the cost of initial and final preparation.

These options may be considered:

- Direct payment by the owner for additional services provided. Cost of the service would be based on the local custom rate charge. This option gives the landowner a tax write-off. The tenant is fully compensated for the additional services.
- The rent payable in year of service could be adjusted. A full rent payment may actually change hands, or the tenant could pay the net difference in rent. Depending on the work provided, the owner may have a net payout to the tenant.
- Rent payable may be altered by averaging the costs of service over the life of the lease.
- The cost of the service may be deducted first from revenue before the owner or tenant takes a share of the crop.

When an owner wants or a tenant decides (with the owner's consent) to break up and reseed all or part of a pasture, the additional costs and loss of grazing can be figured out. Any of the following options may apply:

- Owner pays cost of seed, fertilizer, fuel, machinery and labor as cash payment to the tenant or custom operator. The land may be seeded to greenfeed in year one and the land rented on a greenfeed basis.
- Tenant pays cost of seed, fertilizer, fuel, machinery and labor and pays a reduced rental in year of services provided.
- Tenant pays cost of seed, fertilizer, fuel, machinery and labor and receives a rent reduction over the years of the lease. The cost is averaged over the years of the lease and deducted from rent payable.

Baling of straw

Most landlords and tenants take for granted that the rent applies to the grain or forage produced on the land. If the tenant desires the straw from a grain crop, should this influence the rental charged? The tenant may need it for cattle or for sale, yet the landlord may want it worked down to maintain land quality. Discuss this in the spring before completing the agreement.

Fall grazing

The landowner and tenant should decide whether fall grazing is to be included as part of the rent or if an additional amount should be paid.

Oil and gas exploration

Disruption of farm operations and disturbance to the land itself are likely with oil activity. Compensation may be paid to either owner or tenant. At the first hint of oil activity on rented land, the owner and tenant should get together, review their rights and jointly decide how to work with the oil company.

Death of tenant or landowner prior to end of lease

The rental agreement should clearly spell out the

plan of action if the above situation occurs. Who will be responsible for completing the farm work? Will the lease continue in the family? Can the standing crop be sold?

Improvements to water, land and buildings

The land rental that is established applies to land as it was when the rate was set. If the tenant desires to improve water availability or quality, for example, increasing the capacity of the dugout, the tenant will need the consent of the landowner. The owner may not want to and does not have to contribute to the cost of the project, and may also be unwilling to reduce the rent. This leaves the tenant with the full cost without reimbursement. Tenants should try for a longer term lease to ensure they recover some of the benefit of the improvement. If the owner will not renew the lease, the tenant will be out the cost of the improvements.

Improvements to land aside from fertilizer application are at the risk of the tenant. They may include: knocking down brush, local drainage, building fences and corrals with the consent of the owner but without any guarantee of lease renewal or extension or reimbursement for costs. Should the lease not be renewed, the money invested is lost.

When improvements to land and water are contemplated, both parties should agree to the specific plans. In addition, the size of the owner's contribution in cash or through a rent reduction should be discussed to ensure that the lease arrangement reflects equally the costs and benefits of the improvement. It may be unreasonable to expect owners to offer large amounts of cash or rent reductions for costly improvements they do not want but they may be willing to extend a lease to let tenants get most of their money back out of the improvements. If the owner is to undertake part of the cost, include this in the lease.

Responsibility for fences

Responsibility for fences should be clearly set out. Cattle at large may cause damage to a neighbor's crop. The Line Fence Act states that the **owner or tenant** is to be responsible for fence upkeep. The Stray Animals Act indicates the damage caused is the responsibility of the livestock owner. Fence upkeep is not likely to be a major expense and is probably best considered as the responsibility of the cattle owner.

Liability insurance

The farm operation constantly is at risk of disaster from fire, the hazards of nature, liability, accident and loss of life. Insurance is a means of protecting against the risk of financial loss. Insurance requirements fall into the following categories:

- Property insurance — this involves insuring the improvements against fire, theft, or vandalism and is payable to the landowner. For additional information, consult a competent insurance agent.
- Liability insurance — in farming there is a risk of injury to employees or to the public. The landowner or tenant of property may be held responsible when an individual is injured or killed as a result of failure, by the landowner or tenant, to maintain the property with due regard to the safety of others. Liability insurance protects the insured against the legal liability for death or injury to another person or damage to the property of another. If ordered through a court judgment to pay compensation to someone who brought suit because of an accident, it will pay up to the limit of the policy. Both parties to a rental agreement should maintain separate liability insurance.

Sharing of operating expenses in crop share agreements

The landowner often shares the expense of the fertilizer and chemicals used on the land. As the amount of the rent that the landowner will receive will be proportional to the amount of production and the price received for it, there is often an active interest on the part of the landowner in farming operations. The response of crops to the application of inputs such as fertilizer, herbicides and insecticides encourages some landowners to share in such operating inputs with the tenant. When the landowner shares these variable expenses, it is necessary to give special consideration to the crop rent share for each.

Having a landlord willing to share operating expenses is a real boost to a tenant. However, problems may arise when a tenant wishes to follow a production plan (crop choice, level of inputs) that differs from the landowner's. Landowners may not see the point in a 100 lb per acre nitrogen application when they never used more than 40 lb per acre. Landowners also need to be assured that all the inputs they contribute will wind up on their land and not elsewhere. Trust is important, but writing down the agreement will help jog short memories.

The above discussion illustrates the importance of establishing the objectives of the landowner and tenant when they enter into a crop share arrangement. As conditions relating to agricultural practices change through time, both tenant and landowner must be prepared to re-establish their positions. For example, a dramatic increase in input costs without reciprocal increases in the prices

received for production means that a new input sharing agreement may need to be developed.

The value of standing hay

A common practice in some areas is the purchase of hay standing in the field. This may be done as an alternative to renting. The payment may be by the acre or ton in cash or on a crop share basis.

The owner would like a return equal to the value of the hay in the stack less the custom operator's cost to put it there. Example, for hay valued at $60 per ton in the stack less the $20 per ton custom charges, $40 per ton standing would be the price desired. An owner may decide to sell by the acre to avoid the trouble of estimating yield and receiving a delayed payment. Since accepting a cash rent is less risky, the owner can probably accept 10 per cent less rent on an acre basis than by the ton basis. In the above example, $34 per ton would be the cash rent per acre.

Tenants would not be happy with the above calculation. Since the risk of poor yield or weather damage rests with tenants, they want more reward for their time and machinery than just custom costs. To avoid these risks, and to obtain a somewhat larger return for their managerial skill, they will estimate the selling value ($60/ton) less their cost ($20/ton) less risk (20%) less management (10%) which would equal $22 per ton.

Landlords, if they cannot find custom operators or do not want to be bothered, must negotiate with their tenants. The final outcome will depend on who holds the high cards.

ALTERNATIVES TO LEASING

Custom farming

Situations arise where landowners, intending to avoid the loss of the rollover provision, wish to remain actively involved in the business of farming rather than renting out their land. This type of arrangement can prove to be more profitable for the landowner than one of the various lease arrangements. Considerable time, effort and managerial ability are required to obtain the desired results. The landowner would make all arrangements for inputs, crop choices, farming practices, marketing decisions and so forth.

If landowners are unable to devote sufficient time to the farm business, they may wish to contract the entire farm operation out on a custom basis. The custom operator's fee should be a cash payment rather than a specified share of the crop. Otherwise, the agreement could be interpreted by Revenue Canada as a crop share leasing arrangement and the rollover provision could be lost.

When a professional custom operator is hired, the price and terms for the work are generally predetermined. If the work is contracted out to a neighbor or other persons, the landowner and operator may find it difficult to establish the terms and prices for the work. Alberta Agriculture's *Farm Machinery Costs As A Guide To Custom Rates*, Agdex 825-4 may provide assistance in this regard.

Tenants should be aware that they could be classified as custom operators. Before entering an agreement, the following points should be understood:

- Custom operators may have their operations classified as a nonfarming business if a substantial portion of their business income is from custom farming.
- If the operation is classified as a nonfarming business, the cash method of reporting income would not be permitted. Instead the income would be reported on the accrual method.

Anyone interested in major custom farming arrangements should read *Custom Farming Agreement*, Alberta Agriculture, Agdex 817-10 and consult with a lawyer and accountant before establishing an agreement.

Joint venture

A joint venture can be defined as a business arrangement where two or more parties maintain joint control over a specific business undertaking and contribute resources towards its accomplishment. There are obvious advantages in carrying on a joint venture: working together, members of a group may pool their knowledge, wisdom, physical and financial resources. There are also obvious disadvantages. Disagreements may lead to stalemates regarding business decisions; dissolution of the venture may trigger an unforeseen tax liability; dishonesty of one member may lead to heavy losses suffered by other members. The life of the joint venture is limited to the length of time it takes to complete the undertaking.

The relationship between the parties in the joint venture will be governed by an agreement which should clearly establish joint control by all of the participants.

Decisions in all areas essential to the accomplishment of a joint venture should require the consent of all parties so that no one party is in a position to control the operation.

Tax implications should be considered after the evaluation of the respective parties' personal integrity.

A joint venture is in many ways like a partnership; however, there are certain very important differences.

For further information see Agdex 812-6 entitled *Joint Ventures*.

Alternative business arrangements such as joint ventures, partnerships and incorporations may provide greater advantages than leasing, depending upon the circumstances. They are worth while investigating if the present arrangement is unsatisfactory.

LEASES AND THE INCOME TAX ACT

This section deals with portions of the Income Tax Act that apply to leasing farmland. This information is not an interpretation of the Act, but is intended to bring various tax considerations and implications of leasing land to the attention of landowners and tenants. It is recommended that inquiries be directed to accountants, lawyers, tax consultants, or your regional farm economist of Alberta Agriculture should specific problems arise.

Income and expense considerations

- Cash rent agreements
  — If the lease is a cash agreement, the amount of rent paid by the tenant may be claimed as an expense. The rent received by the landowner will be declared as income.
- Crop share rent agreements
  — Crop share rent payments are income to the landowner. These payments are not an expense to the tenant, unless the total gross income for the rented land has been included in the tenant's income.

  The tenant may claim any repair expenses incurred in maintaining the landowner's property.

Nonresident withholding tax

- Cash rent agreement
  — If the landowner is a nonresident of Canada, the tenant must withhold 25 per cent of the rent payable and forward this to Revenue Canada. (Note: if the nonresident landowner resides in the United States, the amount of tax withheld is 15 per cent rather than 25 per cent.) The withholder, the tenant, must forward the tax to the District Taxation Office by the 15th day of the month following the month when rent payment was made.
- Crop share agreements
  — If the lease is a crop share agreement, the share of revenues from production must be reduced by the appropriate amount of withholding tax. For instance, when grain produced from the rented land is sold to a major grain company with payments allocated to the landowner and tenant, the withholding tax is deducted from the nonresident's cheque by the grain company. **The tenant is required to indicate to the grain purchaser that the landowner is a nonresident of Canada.** If the production is sold to a small business like a feedlot, it may be advisable for the tenant to take full payment for the production. The tenant will then deduct the withholding tax from the landowner's share of the revenues. The withholding tax must be sent to Revenue Canada by the 15th day of the following month. An account is established with Revenue Canada that includes the names of all parties involved, the type of payment — in this case rent — and the month that rent was paid and tax withheld.
- Consequences of failing to comply
  — Should the tenant not forward the withholding tax, Revenue Canada will attempt to collect the tax from the landowner. If the landowner does not pay this tax, the tenant will be held responsible. As well, the tenant could be subject to fines and penalties.

Five-year block average

The five-year block average is a method whereby farmers determine the income tax payable in the last year of a five-year period, based upon calculations of the average income of the previous five years. To be eligible to utilize this income averaging method, the following three requirements must be met:

- the chief source of income in the averaging period is from farming
- income tax returns must be filed on time for each of the five years
- a completed form T2011, Election to Average Income, must be filed on or before April 30, following the tax year in which the block average will be made.

Landowners who receive income based upon the tenant's gross production, such as in crop share lease agreements, may elect to five-year block average. This is provided that the landowner's income from farming exceeds nonfarm income.

Where a farm is rented on any other basis, for example cash rent, the income from this source is not eligible for averaging, as the income is not considered to be from the business of farming.

Note: Under the tax reform proposals, the five year block average is to be phased out by 1991. In effect, 1988 is the last year to start a five year block average.

Options and right of first refusal

An option is a contract under which a purchaser

pays for the right to purchase the property at a given price any time before a specified date. Vendors are bound for that period and may not sell their property to anyone else. Option holders are committed only to the amount paid for the option — they pay only the purchase price if they decide to exercise their option (i.e. buy the property). Two important contracts are involved in options: 1) the option contract and 2) the actual sales contract if the option is exercised. Options are also used for lease renewals. A lease contract may have a clause that allows the lease to be renewed by the lessee (tenant) at the end of the lease period.

A **right of first refusal** is used when vendors have not yet decided to sell their property but they feel they may in the future. It involves the purchaser paying for the right to match any offer the vendor receives and would accept. For example, if Smith has a right of first refusal on Jones' quarter section and Jones is offered $100,000 for the quarter, he must allow Smith to match this offer. If Smith matches this offer, Jones must sell Smith the property. If Smith won't match the offer (i.e. refuses it), Jones may then sell to someone else. The key is that Smith can buy the property only if Jones gets an offer Jones would accept, not just any offer.

Like an option, a right of first refusal can also be used as a type of renewal in a lease.

Occasionally, lease agreements contain an option to purchase the rented land. An option to purchase can simply state that the tenant has first chance to buy the property. It could state that the tenant is able to buy the land at the end of the lease by matching the highest outside bid the owner receives. Alternatively, a price might be set at the beginning of the lease, and at any time until the lease expires, the tenant may buy it for that price. Finally, it might allow the tenant first chance to buy the land for the price the owner sets at the end of the lease. Setting a future price is risky. Serious tax implications could apply depending upon the nature of the agreement.

In a lease agreement with an option to purchase, the rental payments may be or may not be applied against the purchase price. If these rent payments are deducted as expenses through the years, they do not become part of the sale price. For example, Smith is renting a quarter section from Jones for $4,000 per year with an option to purchase the property. They agree that one-half the rental payments will be applied against the purchase price if the option is exercised. In three years, Smith decides to go ahead with the purchase of the property at fair market value ($100,000). One-half the rent ($2,000 x 3 years = $6,000) reduces the purchase price to $94,000. The landowner calculates the capital gain on the property from the tax base to $94,000.

If, at the beginning of the lease the purchase value is set and through time is substantially less than the fair market value of the property at the time of purchase, the contract is deemed an agreement for sale. The rental payments then become land payments and are not deductible expenses of the tenant.

Before entering into an agreement of this nature, landowners and tenants should consult with their accountant or lawyer in order to determine the full implications of their actions. Interpretation Bulletin IT-233, available from Revenue Canada, outlines rules with respect to lease agreements which include an option to purchase.

Rollover provision

The Income Tax Act provides for a rollover of capital gain on farmland and depreciable property from a landowner to his/her child if the landowner, his/her spouse, or any one of his/her children were actively engaged in the business of farming at the time of the transfer. For a person to be classified as active, the owner of the property must be responsible for the managerial decisions and be considered a risk taker. Revenue Canada has deemed that any cash rent and many crop share arrangements place the landowner in a nonactive position. The most notable exception would be in the instance that the land is rented to a child of the landowner. (A child is defined in the Income Tax Act to include a taxpayer's child, grandchild, great grandchild, son-in-law, daughter-in-law, adopted and step-children, plus a wholly dependent child).

If a landowner transfers land and is in a nonactive position, Revenue Canada would deem the land sold at fair market value. The landowner could be subject to capital gains, regardless of the actual sale price received for the land.

To maintain the active position an alternative is to custom hire the farming operations. This puts the nonactive owner in an active position as the manager of the farm, even though he/she does not do the farm work.

Land leased to nonfamily members would not qualify for the rollover provision, and the landowner or the landowner's estate could face serious tax implications.

Since January 1, 1985, the $500,000 lifetime capital gains exemption could apply to such deemed proceeds and substantially reduce the tax liability. Before relying on this exemption to shelter your taxable income, check out the effect of the alternative minimum tax calculation.

In circumstances where the proceeds received are not significant, the minimum tax liability will not be triggered. To understand these effects in your own situation, please consult **Tax Management Strategies for Alberta Farmers** publication Agdex 837, which describes the $500,000 exemption and

the minimum tax in detail.

There are also new propsals contained in the White Paper on tax reform regarding the $500,000 capital gains exemption and the definition of who qualifies for the exemption.

As these proposals are not law at the time of printing, the details are not provided except that the rules apply to farm property acquired after June 12, 1987.

To maintain an active farming position and qualify for the rollover, a farmer may custom-hire the farming operation or consider forming alternative business arrangements, such as joint ventures or partnerships.

LEASES AND GOVERNMENT PROGRAMS

Leases and hail and crop insurance

Insurance and risk go hand in hand. Landlords looking to reduce the risk of the rent not being paid are not likely to collect the rent from the Alberta Hail and Crop Insurance Corporation. In Alberta, all-risk crop insurance can only be purchased by actual farm operators.

This means that landlords will not participate in a crop insurance payout in the case of a crop failure, even though the lease agreement is based on a shared risk concept.

However, there is a way landlords and renters can make an arrangement to suit both. The lease may contain a clause which spells out how the crop insurance cheque will be split between the landlord and the renter. For example, they may agree to split the cost of the premium and share in the benefits according to the original cropshare split.

Whether this is a suitable decision will depend on the individuals involved. Insurance premiums are dependent on the risk area, crop, coverage level and claim history. Landlords should realize that each renter that farms their land may be in a different standing with the insurance corporation. As such the landlord should weigh the insurance decision based on each individual's record with the insurance corporation.

A feature that may interest landlords in insurance discussions with renters is that the coverage for damage is related to the entire acreage of a particular crop seeded by the renter. Suppose a renter had four quarters of canola, three of which were owned and one rented. Suppose the rented crop was wiped out but the other three had bumper yields. The crop insurance assessment would look at all the canola, and it may well be that the overall yield would not trigger a payout. The landlord on the cropshare basis would receive nothing even though insurance was purchased and the crop lost.

Straight hail insurance is made available by the corporation and can be purchased by landlords as well as operators as long as the total dollar value of the insurance does not exceed $125 an acre. This is a separate program that is not associated with the all-risk crop insurance program.

Questions regarding crop insurance should be addressed to the Alberta Hail and Crop Insurance Corporation, 5718 - 56 Avenue, Bag Service #16, Lacombe, Alberta, T0C 1S0.

Canadian Wheat Board Act (Federal)

The Canadian Wheat Board controls the marketing of most grain and oilseed crops in Western Canada. The Wheat Board issues a permit book for marketing quota purposes to actual grain producers.

You can apply for a permit book if:

- you are a producer engaged in the actual production of either wheat, oats, barley, rye, flaxseed, canola or rapeseed during this crop year

OR

- you are a producer whose land is in summerfallow and/or is seeded to perennial forage or miscellaneous crops during this crop year and you or your landlord, vendor or mortgagee had an interest in either wheat, oats, barley, rye, flaxseed, canola or rapeseed produced during the 1986-87 crop year.

SPECIAL DELIVERY PERMIT BOOKS

If you still have carried-over grain to deliver but do not qualify for a regular permit book, you may qualify for a special delivery permit book.

Those eligible for a special permit are:

- Estates and individuals who have quit farming or have reduced their farming operations.
- Producers who have summerfallowed their land for two consecutive crop years and have not seeded any acres to grain.
- Producers who have arranged their farming operations so that their total assignable acres compute to zero and a base cannot be established for the delivery of grain through a regular permit book.

A special permit book does not allow you to dispose of all your grain at one time. Any carried-over grain must be delivered within the quotas in effect. There is one exception: estates which have disposed of all their land and are issued a special permit book will be allowed to deliver up to 55 tonnes of grain without regard to quota, with any balance being delivered under authorized quotas.

A request for a special permit book application should be sent to the Country Services Division on or after August 1 of the new crop year. When you receive the application, please complete it and return it to the board. If you are eligible, the special delivery permit book will then be issued to you.

DEFINITIONS

Under Section 19 of **The Canadian Wheat Board Act**, the board is required to issue permit books to producers as defined in section 2(1) of the act. Definitions contained in that section are:

- **Actual Producer** — a producer actually engaged in the production of grain.
- **Producers** — includes, as well as an actual producer, any person entitled, as landlord, vendor or mortgagee, to the grain grown by an actual producer or to any share therein.

Only those producers as defined under the act are entitled to appear on a permit book. In addition to the actual producer, the following qualify to appear on the permit book as "Interested Parties".

- **Landlord** — a party who rents land to an actual producer under a crop-share agreement. If land is rented basis a cash agreement, the landlord is not entitled to appear on the permit book.
- **Vendor** — a party who sells land to an actual producer and who, under the terms of the sale, receives a share of the crop grown on that land.
- **Mortgagee** — a party who lends money to a landowner and acquires a charge (mortgage) on the land as security for the loan with a share of the crop as part of the repayment terms.

JOINT PRODUCERS

The phrase "actual producer" also covers persons combined as an entity in the production of grain, e.g., husbands and wives, fathers and sons, partnerships, etc. Such joint entities should appear under Suffix A as the actual producer. Joint actual producers are parties who cultivate, seed and harvest the crop or who direct and are responsible for these operations on a share basis on the land described on the permit application.

As well as issuing a joint identification number in the name of the "joint actual producers", the Country Services Division will issue an identification number to each individual producer on request so that deliveries can be made in their separate names.[1]

When lease agreements expire and tenants cease to farm the rented property, they are eligible to apply for a special permit to deliver their share of grain carried over on the leased land.

Where landowners sell their land and no longer farm it, they are eligible to apply for a special permit book to deliver their share of grain carryover. If landowners merely changed tenants, they do not qualify for a special permit book. They would have to either deliver their share of grain carryover through the permit book of their new tenant or sell the grain on a nonquota basis.

The Canadian Wheat Board requires that actual grain producers allocate quota acres. In some instances, this could be to the detriment of the landowner since quota acres arising from rented land are not separate from the other quota acres farmed by the tenant. For this reason, a clause should be included in the written agreement which specifies how quota acres will be allocated to ensure landlords have an opportunity to market their share of the grain produced on the rented land.

An agreement between the landowner and tenant should clearly identify the responsibility for delivery and sale of quota and nonquota grains. Usually the tenant is responsible for the actual delivery of grain in accordance with prevailing quotas and market conditions. However, to ensure that they receive their share of the proceeds, landowners may want to specify how nonquota grains and oilseeds are to be sold.

Western Grain Stabilization Program

The Western Grain Stabilization Program came into effect on April 1, 1976. This voluntary program is based on a comparative measure of cash flow throughout the designated Canadian Wheat Board area to assist producers of grain and oilseeds.

Main features of the program are:

- The program covers the seven main grains — wheat, barley, oats, rye, flax, canola and mustard seed — grown in the Wheat Board area.
- Only actual producers who are Canadian citizens or landed immigrants may participate. Companies, cooperatives and partnerships are included if the individual members are actual producers and if the farming business is more than 50 per cent Canadian owned.
- The program is voluntary for new grain producers. Those who do not wish to participate may opt out.
- Participating producers pay a specified yearly levy rate ranging from a low of one per cent to a high of 2.5 per cent until an allowable maximum in grain sale proceeds is reached.
- The federal government's contribution equals the levy rate paid by producers plus an additional two per cent on all eligible producer proceeds.
- When maximum levies have been paid, producers receive endorsement stickers for their permit book which exempt further deliveries from levy deduction. The program is administered by the Western Grain Stabilization Administration in Winnipeg. In addition to its contribution to the stabilization fund the federal government also pays the full cost of administering the program.
- The stabilization fund earns interest when it has a surplus. Interest is charged against the debt if the fund is in a deficit position.
- The program runs on the **crop year**. As soon as possible after the close of each crop year, producers receive a statement of their individual levy contributions into the fund for that crop year period.
- After the close of each operating year, calculations are made of total grain receipts in the Wheat Board area, total costs of growing this grain and the resulting average and "per tonne" net cash flow.

[1] *The Canadian Wheat Board Producer's pamphlet, 1987-88 crop year.*

- When a stabilization payment is made, the individual producer's share is determined by comparing the individual's levy contributions with total levy contributions paid by all participants into the fund in the most recent three years.
- Levies paid into the stabilization fund are tax deductible. Payments received from the fund must be declared as taxable income.
- Levy may be paid voluntarily on the proceeds of crop/hail insurance settlements, pedigreed seed sales and on grain sales to designated purchasers (feed mills, feedlots, seed plants), who do not deduct levy at the time of sale.

Landlords who do not have their own permit book cannot contribute to the program or receive payment. For further information contact the Western Grain Stabilization Administration, 935 - 303 Main Street, Winnipeg, Manitoba, R3C 3H5.

Government payments and subsidies

In a crop lease, a clause to the same effect as the following should be added:

> In the event that any payment, subsidy, or other reimbursement is made under any government agency, or the marketing agency in connection with grain production on the aforementioned lands during the term of this lease, said payments, whether paid to the landlord or tenant, shall be shared in the same proportions as the share of the crop set out in this lease agreement or as follows.

A clause such as this would have settled disputes that arose under the Prairie Crop Drought Assistance Program. As the program covered loss of crops, the landlord under a crop-share lease suffered as well as the tenant. However, as the payments were made to "Suffix A" parties in the Canadian Wheat Board permit book, the tenant believed it was solely theirs. For convenience, it was handled in this fashion, but the payments were subject to the agreement "Suffix A" (tenants) and "Suffix B" (the landlords) had in dealing with such matters.

The Special Canadian Grain program is administered in the same fashion. This latter program raises more problems than the drought assistance program as it is paid on seeded acreage which would indicate it belongs to the operator (tenant), but it is tied in to a commodity price which is production, and production is shared in a crop share lease by both landlord and tenant.

If the lease has an arbitration clause the division of these payments could be resolved through it. However, arbitrators would not be necessary if a clause is included in the lease dealing with the matter and approved by both parties, as follows:

> Where contributions are required for entitlement to any payment, subsidy, or reimbursement the landlord and tenant shall share the costs and the income in the same proportions as the share of the crop or as follows.

The sample lease agreements included in this publication also suggest a possible phrasing for this type of payment.

NONAGRICULTURAL USE OF LEASED LAND

A number of nonagricultural uses of land are occurring in Alberta and these often cause conflicts between the landlord and tenant. Disputes usually occur with respect to the division of the compensation paid by the parties making nonagricultural use of the land. Four of the more common uses are the building of a pipeline, location of a drilling site by the oil and gas industry, erecting a power line across the land and government programs to assist farmers.

Pipeline and wellsite locations:

Very few leases, even when prepared by a lawyer, though designed to cover the rights and obligations of the owner and the occupier of agricultural land, contemplate, by means of provisions relating thereto, the occurrence of the building of a pipeline across the land or the location of a wellsite on the land. This may occur on land which is in summerfallow, seeded to crop, pastureland or a hayfield. Sometimes, oil industry activities will affect several fields and thus different types of damages may occur on one single intrusion. The oil company is often represented in the field by an agent and so the owner and occupier may deal with one person or company, but actually receive the compensation from another company. Because of this, it is even more important that lease documents spell out very clearly the moneys in which the compensation is to be shared by the owner and the occupier.[1]

A clause that might cover the situation in a crop share lease is as follows:

In the event the petroleum industry or any other party develops any part of the said lands for a well, pipeline or other related use, the parties agree that the compensation paid for such development shall be divided between them as follows:

(a) The compensation paid for the taking of land shall be paid directly to the lessor for his/her own use absolutely;
(b) the compensation paid for loss of crop shall be divided one-third (1/3) to the lessor and two-thirds (2/3) to the lessee;
(c) The compensation paid for inconvenience to farming operations and to expenses incurred in rehabilitating the site including all related damages with the exception of actual crop loss shall be paid to the lessee for his/her own use absolutely.

Power lines

A clause similar to the one that applies to pipelines and wellsites could be drafted to deal with power lines. Further information is available from the office of the Farmers' Advocate, 7000 - 113 Street, Edmonton, Alberta, T6H 5T6.

[1] *From a paper prepared by John J. Steward Fisher LLB, Didsbury, Alberta, for the Legal Education Society of Alberta.*

APPENDIX 1

QUOTA ACREAGE ALLOCATION

Re: Land lease agreement between _____
Name(s) of Landlord(s)

and _____
Name(s) of Tenant(s)

on the following farm land and premises:

_____

_____

_____

from the _____ day of _____ (Month), 19 ___ to the _____ day of _____ (Month), 19 ___ .

We the undersigned do hereby agree that the total quota acres associated with the lease for the crop year ending July 31, 19 ___ shall consist of the following:

SEEDED Hectares (Acres)	CALCULATION OF ASSIGNABLE Hectares (Acres)	QUOTA ACRES Hectares (Acres)
Grain Hectares (Acres) _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ Summerfallow _____ SUBTOTAL [ ] Perennial Forage [ ]	COMPARE: Enter 1/3 of Subtotal (1) [ ] Enter Perennial Forage (2) [ ] ADD: (A) ENTER (1) or (2) whichever is smaller [ ] (B) Enter Subtotal [ ] (C) Equals Total Assignable (A + B) Hectares (Acres) [ ]	Grain Hectares (Acres) _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ Total Quota Hectares (Acres) [ ] * Total Quota Hectares (Acres) should equal Total Assignable, Hectares (Acres)

_____
Witness — Landlord(s)

_____
Witness — Tenant(s)

CAVEAT FORBIDDING REGISTRATION

To the Registrar of the _____ Land Registration District.

Take notice that I, _____,
(insert name and addition of caveator)

claim _____
(specify the estate or interest claimed)

in _____,
(legal land description)

standing in the register in the name of _____;

and I forbid the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest, unless the instrument or certificate of title, as the case may be, is expressed to be subject to my claim. Appoint _____

as the place at which notices and proceedings relating hereto may be served.

Dated this _____ day of _____, 19 ____.
Month

_____
(Signature of Caveator or his Agent)

AFFIDAVIT IN SUPPORT OF CAVEAT

I, _____, make oath and say as follows:

1. I am the within named caveator.
2. I believe that I have a good and valid claim upon the said land, and I say that this caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

Sworn before me at _____)
in the Province of Alberta)
this ____ day of _____ A.D. 19 ____)

_____
(signature of caveator)

_____
A Commissioner for Oaths in and for the Province of Alberta

CONSENT TO MAKE MAJOR IMPROVEMENTS

Re: Land Lease Agreement between _____
Name(s) of Landlord(s)

and _____
Name(s) of Tenant(s)

on the following farm land and premises:

_____

_____

_____

from the _____ day of _____, 19 ___, to the _____

day of _____, 19 ___.

I/We, _____, do hereby authorize
Name(s) of Landlord(s)

_____ to make the following
Name(s) of Tenant(s)

major improvement on the said land which shall become a part thereof and vest in the landlord at the expiry or termination of the lease.

_____

_____

_____

_____

In so doing the landlord will make unto the tenant the following compensation for the improvements made.

_____

_____

_____

_____

Dated this _____ day of _____, 19 ___.

_____ _____
Witness Landlord(s)

_____ _____
Witness Tenant(s)

LEASE RENEWAL FORM

We, _____ of
Name(s) of Landlord(s)

_____ and
Address(es)

_____ of
Name(s) of Tenant(s)

_____
Address(es)

being parties to a lease agreement for the space of _____ years from the _____ day of _____ (month), 19 ____ to the _____ day of _____ (month), 19 ____, on the following farm land premises:

_____

_____

_____

_____

do hereby extend the term of the said agreement for the space of _____ years from the _____ day of _____ (month), 19 ____ to the _____ day of _____ (month), 19 ____ according to the terms and conditions outlined in the said agreement unless specified differently, that is to say:

_____

_____

_____

_____

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands.

Dated this _____ day of _____, A.D. 19 ____.

_____ Witness _____ Landlord

_____ Witness _____ Landlord

_____ Witness _____ Tenant

_____ Witness _____ Tenant

THE DOWER ACT

CONSENT OF SPOUSE

I, _____ , being married to the above named

_____ do hereby give my consent to the disposition of our homestead, made in this instrument, and I have executed this Document for the purpose of giving up my life estate and other dower rights in the said property given to me by The Dower Act, to the extent necessary to give effect to the said disposition.

_____

(Signature of Spouse)

CERTIFICATE OF ACKNOWLEDGEMENT BY SPOUSE

1. THIS document was acknowledged before me by _____ apart from her husband (or, his wife).

2. _____ acknowledged to me that she (or, he)

   (a) is aware of the nature of the disposition (or agreement),

   (b) is aware that THE DOWER ACT, gives her (or, him) a life estate in the homestead and the right to prevent disposition of the homestead by withholding consent,

   (c) consents to the disposition (or agreement) for the purpose of giving up the life estate and other dower rights in the homestead given to her (or, him) by THE DOWER ACT, to the extent necessary to give effect to the said disposition (or agreement),

   (d) is executing the document freely and voluntarily without any compulsion on the part of her husband (or, his wife).

Dated at _____ , in the Province of Alberta

this _____ day of _____ A.D. 19 ____

_____

(Title of Officiating Officer)

AFFIDAVIT

I, _____ of _____

in the Province of Alberta _____
make oath and say: (Occupation)

1. THAT I am the Lessor named in the within instrument.

2. THAT I am not married.

   or

   THAT neither myself nor my spouse has resided on the within mentioned land at any time since our marriage.

SWORN before me at _____)
in the Province of Alberta)
this ____ day of _____ A.D. 19 ____)

_____
(Signature of Landowner)

_____
A Commissioner for Oaths in and for the Province of Alberta

AFFIDAVIT OF EXECUTION

I, _____

of _____ in the Province of Alberta, make oath and say:

1. That I was personally present and did see _____ named in the within instrument, personally known to me to be the person(s) named therein, duly sign and execute the same for the purpose named therein.
2. That the same was executed at the _____ of _____ in the Province of Alberta, aforesaid and that I am the subscribing witness thereto.
3. That I know the said _____ and he/she/each is in my belief of the full age of eighteen years.

Sworn before me at _____)
in the Province of Alberta)
this ____ day of _____ A.D. 19 ____)

_____
(Witness sign here)

_____
A Commissioner for Oaths in and for the Province of Alberta

AFFIDAVIT OF EXECUTION

I, _____

of _____ in the Province of Alberta, make oath and say:

1. That I was personally present and did see _____ named in the within instrument, personally known to me to be the person(s) named therein, duly sign and execute the same for the purpose named therein.
2. That the same was executed at the _____ of _____ in the Province of Alberta, aforesaid and that I am the subscribing witness thereto.
3. That I know the said _____ and he/she/each is in my belief of the full age of eighteen years.

Sworn before me at _____)
in the Province of Alberta)
this ____ day of _____ A.D. 19 ____)

_____
(Witness sign here)

_____
A Commissioner for Oaths in and for the Province of Alberta

KNOWING YOUR CASH COSTS

CASH ITEMS	TOTAL	PER ACRE
Land taxes		
Seed		
Fertilizer		
Pesticides		
Crop/hail insurance		
Insurance — liability and property		
Utilities		
Land loan payment		
Building loan payment (if used by renter)		
Equipment loan payment (if used by renter)		
Other		
TOTAL CASH OBLIGATIONS PER ACRE		

FINANCIAL RETURN CONSIDERATIONS

RETURN ON LAND EQUITY

$ Beginning of year equity x Term deposit rate % ÷ Acres = _____

RETURN ON BUILIDING EQUITY

$ Beginning of year equity x Term deposit rate % ÷ Acres = _____

RETURN OF BUILIDING EQUITY (if building used by renter)

$ Beginning of year equity x $ End of year equity value ÷ Acres = _____

RETURN ON EQUIPMENT EQUITY (if equipment used by renter)

$ Beginning of year equity x Bank deposit rate % ÷ Acres = _____

RETURN OF EQUIPMENT EQUITY (if equipment used by renter)

$ Beginning of year equity x $ End of year equity ÷ Acres = _____

TOTAL FINANCIAL RECOVERY PER ACRE _____

CROP ENTERPRISE BUDGET

CROP _____ ESTIMATED RETURNS

YIELD per acre _____

NUMBER OF ACRES _____ PRICE per _____

RETURNS per acre _____

VARIABLE COSTS	APPLI-CATION RATE	$ PRICE	$ COST PER ACRE	# OF ACRES	TOTAL COST $	TOTAL UNITS USED
SEED						
FERTILIZER						
CHEMICALS						
OTHER						
SUPPLIES						
CROP AND HAIL INSURANCE						
MACHINERY - FUEL AND LUBE						
CUSTOM WORK HIRED						
INTEREST ON OPERATING CAPITAL						

TOTAL VARIABLE COSTS PER ACRE _____

RETURN OVER VARIABLE COSTS _____ - _____ = _____